The Errors of *"Authentic Illusions"*

A Critique of Barbara J. Linaburg's Home-Alone Thesis

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"And Jesus answering them, said: Have you not read so much as this, what David did, when himself was hungry and they that were with him: How he went into the house of God and took and ate the bread of proposition and gave to them that were with him, which is not lawful to eat but only for the priests?" (Luke 6:3-4)

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I. Introduction: Mrs. Linaburg's *Authentic Illusions*

Faithful Catholics that hold the sedevacantist position today are confronted with an extraordinary dilemma on a scale that far surpasses any similar circumstances in the history of the Church. The Church seems to be in eclipse, as many have described it. Whatever true hierarchy remains is practically unknown to most and, subsequently, impossible to reach or have recourse to. Faithful clerics are left with the decision of whether to administer sacraments when it is impossible to reach a superior for authorization. Faithful laity are, likewise, left to decide whether to receive sacraments from these clerics during these times. In some cases the laity themselves may even have to decide whether to administer sacraments, such as Baptism and Matrimony, without explicit authorization from the Church. In this entire dilemma, the decisions of both the clerics and laity that are conscious of this dilemma will ultimately be determined by certain fundamental moral principles they hold to be true.

In her 60 page booklet, *Authentic Illusions*, Barbara J. Linaburg contends that the only moral decision any faithful Catholic can make today, in regards to the sacraments, is to cease administering and receiving them all together. Mrs. Linaburg suggests that the only action one can take for the health of their soul is to stay home and pray. Her thesis represents what is commonly referred to as the "Home-Alone" thesis. The fundamental principle that seems to be the basis for this thesis is essentially that, in regards to ecclesiastical laws, the letter of the law must always be followed, regardless of the circumstances.

The content of *Authentic Illusions* consists mostly of quotes from a variety of Church sources, with periodic comments by Mrs. Linaburg. Anything that might be considered an argument or claim in relation to her thesis, and all of her supporting quotes, are contained within the first 41 pages of the booklet. The last 19 pages are largely a commentary about the Novus Ordo Church, which includes no other claim or argument in relation to her thesis.

Instead of being organized by topic, the entire booklet is primarily organized in a manner similar to a bibliography. Each heading of the 29 general sections in *Authentic Illusions* is the title of a particular source used by Mrs. Linaburg. Each section, then,

only contains quotes from the particular source mentioned in the heading of that section. Many quotes concerning a single topic are, therefore, scattered throughout different sections, based on the source from whence they originate. The quotes are obviously selected and included by Mrs. Linaburg because she believes they have some bearing on her thesis. She frequently italicizes or adds bold formatting to the words of the quote in order to emphasize what she thinks is relevant. She, at times, also adds her own words in brackets within a quote or at the end of it, in order to explicitly state what she thinks the quote is or isn't saying. Whatever rationale was behind the way she arranged and organized her booklet is a mystery, but the way in which it is arranged makes it quite difficult to analyze everything she has to offer for each topic. It also makes it difficult to see what precise arguments she is making or implying, if she makes or implies any at all.

Mrs. Linaburg's seems to use as little of her own words as possible, likely to give the appearance that her thesis is not her own, but that of the Church. Though she presents many quotes of Catholic writings, it is difficult to know how she thinks the quotes support her thesis since she offers as little as possible of her own comments in regard to them. Though there is no lack of claims made by Mrs. Linaburg in *Authentic Illusions*, she, in fact, rarely attempts to explicitly offer any logical argument for these claims. This lack of explicit arguments and commentary forces a person into having to make assumptions as to what she thinks the premises are for the conclusions she makes.

Much of Mrs. Linaburg's own commentary within *Authentic Illusions* consists of fiery emotional statements and diatribes that add nothing to her thesis, but merely obscure the issues and poison the well. With the large amount of emotional rhetoric and the near absence of any argument, her comments could be said to be all heat and no light. While they might impassion the reader's heart, one way or another, they offer nothing for the mind; though they may appear to. Moreover, this loaded language tends to cloud the mind and detract from clear and coherent thoughts.

This critique of *Authentic Illusions* is not an attempt to provide a solution to every problem in today's dilemma. The primary purpose of this critique will not be so much as to provide solutions, as it will be to reveal and examine some of the

fundamental errors in Mrs. Linaburg's thesis. Though not the primary purpose, some solutions, along with some facts that establish true principles, will naturally be expounded upon somewhat when examining her errors. Not every error in *Authentic Illusions* will be addressed, nor will every topic necessarily be examined. However, most of the errors exposed herein concern premises that are foundational to Mrs. Linaburg's thesis. These errors show the foundational premises of *Authentic Illusions* to be false and, consequently, the entire thesis of *Authentic Illusions* crumbles with the errors.

Overall, most of the errors made in *Authentic Illusions* seem to arise from imprudent research with a fixation on trying to find quotes that only appear to support a predetermined conclusion, and with little regard for anything that might oppose that conclusion. The result is that certain quotes are carelessly taken and presented out of context, while others are presented as if they are supporting a claim when, on more careful inspection, they clearly do not. At other times, claims are made by Mrs. Linaburg for which she offers no supporting evidence whatsoever. *Authentic Illusions* is also replete with loaded language, as previously mentioned, and common logical fallacies such as question begging, equivocation, red-herrings, straw man arguments, and so on. The straw man arguments, however, tend to be more like "invisible man" arguments as Mrs. Linaburg avoids stating or showing the arguments she claims to be refuting.

At the core of most of the errors of *Authentic Illusions*, is the conflating of all canon law with laws of God and, subsequently, applying the rules in relation to the laws of God to all canon law. This is exemplified midway through *Authentic Illusions* where Mrs. Linaburg cites a single passage from Fr. Heribert Jone's *Moral Theology* in regard to the moral theology surrounding a conflict of obligations.

> "Among the laws of nature a law that prohibits precedes a law that commands. Divine positive law takes precedence over human legislation." (Linaburg, 29)[1]

[1] Linaburg, Barbara J. *Authentic Illusions*. 2003.

Following this quote, Mrs. Linaburg proceeds in providing two-and-a-half pages of various prohibiting laws found in the 1917 Code of Canon Law which relate to jurisdiction and the governance of priests and bishops. It is apparent that she is implying that the *Moral Theology* quote establishes a principle to be applied to these canon laws. She uses this quote as if it states that those canon laws that prohibit precede those that command. In other words, she is trying to show that the prohibiting canon laws which she lists must always be followed to their letter, despite what any other laws might say and despite any other reasons that might exist.

Mrs. Linaburg, however, makes a serious error from the onset by applying a principle of natural law to canon law. It is a flagrant error which undermines the entire point she is trying to make in this specific section of her booklet and elsewhere. Fr. Jone's statement on laws that prohibit is taken and used completely out of context by her. The passage she quotes from Fr. Jone's *Moral Theology* clearly states, "among the laws of nature." Therefore, the principle, "a law that prohibits precedes a law that commands," is in reference to *natural law*, not canon law. It would be a big mistake for anyone to indiscriminately apply this quote and principle about natural law to a list of canon laws.

For clarity's sake, here is the full quote from Fr. Jone's *Moral Theology*.

> "In a conflict of obligations the higher ones takes precedence. Duties conflict when two laws apparently oblige simultaneously and only one can be observed. As a matter of fact only the more important one actually obliges. Thus, the natural law takes precedence over the positive law. Among the laws of nature a law that prohibits precedes a law that commands. Divine positive law takes precedence over human legislation; the law of a superior society must be preferred to the law of a society which is subordinate to it in purpose and function. – Therefore, e.g., whoever must care for a dangerously ill person and cannot at the same time attend Sunday Mass, is not obliged to hear Mass. – If two duties conflict and one cannot in anyway

> determine which of the two is the more important, he does not sin no matter which obligation he fulfills." (Jone, 30)[2]

Though only a very small portion of this passage was included in *Authentic Illusions*, the second statement, "divine positive law takes precedence over human legislation," was another part included by Mrs. Linaburg to apparently imply that the canon laws that she lists are divine positive laws. However, many of the canons she lists regard matters of ecclesiastical discipline. Ecclesiastical discipline is not a part of natural law or divine positive law, but is, rather, human law.

> "That ecclesiastical discipline should be subject to change is natural since it was made for men and by men. To claim that it is immutable would render the attainment of its end utterly impossible, since, in order to form and direct Christians, it must adapt itself to the variable circumstances of time and place, conditions of life, customs of peoples and races, being, in a certain sense, like St. Paul, all things to all men." (Boudinhon, "Ecclesiastical Discipline," 31)[3]

This error of indiscriminately treating all canon law as natural law or divine positive law permeates all of *Authentic Illusions*. It is at the very foundation of Mrs. Linaburg's thesis. The previous example is just one of many manifestations of this and others errors, which the following chapters herein will illustrate.

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[2] Jone, Heribert, O.F.M. Cap., J.C.D. *Moral Theology.* Westminster, MD: The Newman Bookshop, 1945.

[3] Boudinhon, Auguste, D.D., D.C.L. "Ecclesiastical Discipline." *The Catholic Encyclopedia.* Vol. 5. New York: Robert Appleton Company, 1909.

II. Preaching

One contention of *Authentic Illusions*, whether explicitly stated or implied, is that preaching the Faith today is condemned for the reason that no one would be able to directly receive authority from the Church to preach. To support this conclusion, Mrs. Linaburg offers two laws from Church councils; which she purports to be dogma. The first of these laws comes from the Fourth Lateran Council of 1215 in regards to the Waldensian heretical sect. All emphasis below is Mrs. Linaburg's.

> "Because some indeed "under the pretext of piety, denying his power" (according to what the Apostle says) [II Tim. 3:5], assume to themselves the authority of preaching, when the same Apostle says: "How… shall they preach, unless they are sent?" [Rom.10:15], let all who, *being prohibited* or *not sent*, without having received authority from the Apostolic See, or from the Catholic bishop of the place, shall presume publicly or privately to usurp the duty of preaching *be marked by the bond of excommunication*; and unless they recover their senses, the sooner the better, let them be punished with another fitting penalty." (D434)[4]

The primary purpose of this disciplinary law was to prevent persons in heretical sects from preaching, as is evident from the context of the Fourth Lateran Council. In no way does this prevent all preaching of the Faith by Catholics during an extended period of time when recourse to the Church hierarchy for approval is impossible.

Authentic Illusions is also a form of preaching by Mrs. Linaburg. If she were consistent in her belief that the letter of this law should be followed without any exception, or that the law must be interpreted to apply to today's situation; then she must believe herself to be excommunicated, along with anyone distributing her booklet. The logical implication of Mrs. Linaburg's proposed adherence to the letter of this law is that preaching the Faith today,

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[4] Denzinger, Heinrich. *The Sources of Catholic Dogma.* 13th Ed. Trans. Deferrari, Roy J. St. Louis, MO: B. Herder Book Co., 1957.

under all circumstances, privately or publicly, becomes a sin. The quote speaks of usurping the duty of preaching; but in no way is a Catholic, whether lay or cleric, usurping another's duty of preaching when they attempt to spread the Faith during a period when it is impossible for them to have recourse to a superior. For Mrs. Linaburg to imply that this law applies to such cases shows that she has read her own conclusion into the law.

She does, however, give a reason for why she believes she has the right to preach. This is found in the second paragraph of her booklet. According to her, her right to preach is apparent in the words of Pope Leo XIII's Sapientia Christianae.

> "No one, however, must entertain the notion that private individuals are prevented from taking some active part in this duty of teaching, especially those on whom God has bestowed gifts of mind with the strong wish of rending themselves useful. These, so often as circumstances demand, may take upon themselves, not, indeed the office of the pastor, but the task of communicating to others what they themselves received, becoming, as it were, living echoes of their masters in the faith" (Linaburg, 1)

To use Pope Leo XIII's words to support one's right to preach, while at the same time denying this right to others, is flagrant hypocrisy. Mrs. Linaburg gives no reason why she has a right that others don't. If she thinks the Church allows her to preach in these times without taking upon herself an office, then there is no reason why a priest would not be allowed to preach in these times without taking upon an office. Priests that preach or even operate an apostolate in a time of crisis, when recourse to a superior is impossible, are not usurping or assuming an office of the Church. They are simply doing their duty as a Catholic to spread and nurture the Faith in an organized manner; just as Mrs. Linaburg has attempted to do with *Authentic Illusions*..

The second quote which Mrs. Linaburg offers to support her conclusion on preaching is derived from the Council of Constance's (1415) list of errors of John Wycliffe.

> "It is permissible for any deacon or priest to preach the word of God without the authority of the Apostolic See or a Catholic bishop." (D594)

This condemnation reiterates the notions of the law mentioned in the previous quote of the Fourth Lateran Council, with the only difference being that the Fourth Lateran Council refers to all persons, while this passage from the Council of Constance refers only to deacons and priests. The same comments above concerning the Fourth Lateran Council's law against unauthorized preaching apply to this passage from the Council of Constance.

If Mrs. Linaburg is inferring that only priests would be forbidden to preach the faith and that she is somehow exempt, then she has not read canons 1384 and 1385.

> **Canon 1384.** "The Church has the right to rule that Catholics shall not publish any books unless they have first been subjected to the approval of the Church and to forbid for a good reason the faithful to read certain books, no matter by whom they are published.
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> The rules of this title concerning books are to be applied also to daily papers, periodicals, and any other publication, unless the contrary is clear from the Canons." (Woywod, *The New Canon Law* , 285)[5]

> **Canon 1385.** "Without previous ecclesiastical approval even laymen are not allowed to publish:
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> 1. the books of Holy Scripture, or annotations and commentaries on the same;
> 2. books treating of Sacred Scripture, theology, Church history, Canon Law, natural theology, ethics, and other sciences concerning religion and morals. Furthermore, prayer books, pamphlets and books of devotion, of religious teaching, either moral, ascetic, or

[5] Woywod, Stanislaus, O.F.M. *The New Canon Law: A Commentary and Summary of the New Code of Canon Law*. New York: Joseph F. Wagner, Inc., 1918.

> mystic, and any writing in general in which there is anything that has a special bearing on religion or morality;
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> 3. sacred images reproduced in any manner, either with or without prayers.
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> The permission to publish books and images spoken of in this canon may be given either by the proper Ordinary of the author, or by the Ordinary of the place they are published, or by the Ordinary of the place where they are printed; if however any one of the Ordinaries who has a right to give approval refuses it, the author cannot ask it of another unless he informs him of the refusal of the Ordinary first requested.
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> The religious must, moreover, first obtain permission from their major superior." (Woywod, *The New Canon Law*, 285)

According to the words of these two canons Mrs. Linaburg would have been forbidden from printing and distributing *Authentic Illusions*. The only way in which she could claim to be justified in doing this would be by invoking the moral principle of *epikeia*. However, she doesn't use the principle of *epikeia* to explain why she has done something forbidden by Church law. This is because, by her own beliefs, *epikeia* can not be used in regards to laws that forbade her to publish and preach, since they are ecclesiastical laws. According to Mrs. Linaburg *epikeia* does not apply to ecclesiastical laws at all.

III. Epikeia

In addressing the topic of *epikeia*, Mrs. Linaburg disqualifies it at the gate, saying that it simply does not apply to ecclesiastical laws. She prefaces her treatment of *epikeia* by stating, "priests use such things as Canon Laws and something called *epikeia* to cover their deceitfulness, knowing that the average Catholic would not know if these things were permitted or not" (Linaburg, 25). She then goes on to assert that it is erroneous to believe "that in the crises of the Church of which we find ourselves today, that we may invoke *epikeia*." This bold claim is foundational to the entire thesis of *Authentic Illusions*. However, no valid argument, and hardly any argument at all, is offered in *Authentic Illusions* to support it. The claim is only grounded in Mrs. Linaburg's own assertions, which are unsupported by any quotes she offers or any other teaching of the Church.

There are four premises (some overlapping) given by Mrs. Linaburg in order to support her assertion that *epikeia* cannot be used in regards to administering and receiving the sacraments today.

1. *Epikeia* refers only to civil laws of man by man for man (p.26).

2. The mind of the lawgiver behind ecclesiastical law is God, and therefore no one is allowed to deduce any exception from the letter of ecclesiastical law (p.26).

3. Invoking *epikeia* is the same as assuming authority without the right to do so (p.26).

4. No matter how grave the necessity, *epikeia* cannot bestow upon a cleric a power which he does not possess (p.28).

Before addressing these four premises, it's necessary to explain the way in which Fr. Riley uses the term *epikeia* in his 1948 book, *The History, Nature and Use of Epikeia in Moral Theology*; which happens to be the sole source used in *Authentic Illusions* concerning this topic. From here on, this will be referred to as Fr. Riley's *Epikeia*. Prior to undertaking this explanation,

however, here is a general definition of *epikeia* as it is commonly described and understood by most canonists and theologians.

> "Cases sometimes arise where it may be assumed that the lawgiver, not having foreseen all possible contingencies, would, if he were consulted, excuse the person so situated.
>
> *Epikia* is the application of a law according to the mind of the lawgiver and contrary to its wording. It applies to human and positive divine laws only, never to the moral law of nature. *Epikia* is not a self dispensation, as is sometimes claimed, but may be likened to an act of justifiable self-defense or self-help, when there is a conflict of duties and one has to follow his own judgment or moral conviction in determining which is the higher duty." (Koch, 180-181)[6]

Fr. Riley's *Epikeia*

Fr. Riley's *Epikeia* is a thick book comprising more than 450 pages on *epikeia's* history, nature, and use; as stated in the book's title.[7] In this work he analyzes the opinions of a variety of theologians, while also offering his own opinions. Many of the statements by him and the theologians he cites are highly nuanced with underlying qualifications. If read out of context, some of these statements could lead a person to think they mean something that they don't mean at all. To make matters more difficult, while the context and qualifiers needed to understand certain statements can sometimes be found by simply reading the sentences, paragraphs, or pages directly surrounding the statement; at other times the necessary context and qualifying statements are found on different pages, in other sections, or in entirely different chapters. It would be a huge task, and beyond the scope of this critique, to

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[6] Koch, Antony, D.D. *A Handbook of Moral Theology*. Ed. Arthur Preuss. Vol. 1. St. Louis, MO.: B. Herder Book Co., 1918.

[7] Riley, Lawrence Joseph, A.B., S.T.L. *The History, Nature and Use of Epikeia in Moral Theology*. Washington, D.C.: The Catholic University of America Press, 1948

analyze and present all of the nuanced statements in Fr. Riley's *Epikeia*. Though, a few things can be pointed out to give a better idea of the meaning of certain statements within the book.

When a statement is made in Fr. Riley's book, whether by him or the theologians he cites, that *epikeia* doesn't apply to particular laws or circumstances; it is not necessarily stating that there is absolutely no exception to the words of those particular laws. Fr. Riley and many of the theologians he cites use a very strict definition for the term *epikeia*, as being just one of a several ways in which an exception to the words of a law might exist. So, when they say that *epikeia* does not apply to a certain law, they frequently mean that, though exceptions may exist to that particular law, the reasons for the exceptions do not fall within their definition of *epikeia*.

Although much of the book elaborates on how *epikeia* should be defined, here is how Fr. Riley briefly defines it.

> "Despite the broad development that has been made in regard to the concept of *epikeia* since Aristotle discussed it, any clear notion of it must be based essentially upon his explanation. Keeping that explanation in mind, we may define *epikeia* as a correction or emendation of a law which in its expression is deficient by reason of its universality, a correction made by a subject who deviates from the clear words of the law, basing his action upon the presumption, at least probable, that the legislator intended not to include in his law the case at hand." (137)

The rest of this section will consist of passages from Fr. Riley's *Epikeia* that illustrate how he differentiates *epikeia* from other types of exceptions to the letter of the law. Many of these exceptions, which he acknowledges as true exceptions, would be considered as *epikeia* by most people, including many Catholic theologians. Fr. Riley, however, simply says they are something other than *epikeia strictly defined.* The rest of this section should illustrate the point that one can not simply take a statement from this book about *epikeia*, as used in its strict sense, to denounce the use of *epikeia*, as used in the broad sense in which it is commonly understood.

In the passage below, for instance, Fr. Riley states that in a case in which the words of a law become morally impossible to follow, a person is justified in deviating from the words of the law, though such a case would not be considered *epikeia* according to the strict definition of the word.

> "The relation of these remarks to *epikeia* is clear. In view of them it is obvious that it would not be altogether correct simply to state that *epikeia* strictly so-called may be used when to follow the words of a law would be morally impossible – for if this latter term is taken to describe a condition in the presence of which a legislator cannot justly impose his law, obviously his power, and not his will, is involved. Hence, one may justifiably deviate from the law without invoking *epikeia*." (160)

In the next passages below, Fr. Riley makes a distinction between *epikeia* and *interpretation*. This distinction is another illustration of the fact that he simply calls by a different name, what most people might consider to be *epikeia*. In the second quote, of the two below, he even mentions this point, stating that most of the older writers considered interpretation to be *epikeia*. It is important to bear in mind that when Fr Riley says that *epikeia* does not apply to something, he isn't necessarily saying that an interpretation of a law couldn't justify someone to perform an act which might, on the surface, appear to be contrary to the words of the law.

> "Now, it is clear from the foregoing brief outline that *epikeia* cannot with exactitude be called interpretation. Interpretation in every case is concerned primarily with the words of the law. Its ordinary purpose is to clarify words or phrases that are obscure and ambiguous (or at least make them clearer than they are) or to discover in precisely what sense the words are to be understood. On the other hand, in a case involving *epikeia*, it is presupposed that the words of the law are clear and that there is a clear interpretation of the law itself as it stands. The case in question is most certainly included in the law, if only the words of the law are considered. But it is the function of *epikeia* to go

> beyond the words of the law, and having determined the intention of the legislator (not the intention which is expressed in the words of the law, but rather that which constitutes an exception or a contradiction to those words), to deviate from the course clearly prescribed by the words of the law, on the basis of the belief that the lawmaker in enacting the law benignly excluded from it the case at hand. And even if interpretation, strictly understood, cannot clarify obscure terms other than by resorting to an investigation of the lawmaker's purpose, even then interpretation will differ from *epikeia*, for it will be concerned with the law maker's immediate purpose and intention as manifested in the law.
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> Here, then, is the first difference which exists between *epikeia* and interpretation. The former, on the basis of the presumed intention of the legislator, puts to one side an entirely clear and obvious law – it corrects the law; it justifies the violation of the legal formula. The latter, whether in an authentic or merely private manner, sheds light upon a law which is obscure and ambiguous, or more completely clarifies a law that may in some degree be clear – it explains the law." (243 -244)

> "The foregoing considerations lead one to believe that frequently what the older writers called *epikeia* is only interpretation. They seemed too prone to consider only the *corpus* of the law without its *anima*. *Epikeia* actually has place, however, only if one deviates from the law considered in its entirety, that is, composed of *corpus* and *anima.*" (245)

Here, in this next passage, Fr. Riley makes a distinction between *epikeia* and *presumed permission*, another concept that most would think of as being identical to *epikeia.*

> "It should also be noted that *epikeia* and the presumed permission of a Superior, though in some ways akin, are not identical. The basis for the distinction has already been insinuated. Presumed permission (and presumed dispensation) presupposes that the case at hand actually is

> included in the law as such. However, one judges that here and now, subsequent to the enactment of the law, the legislator or Superior allows him to disregard it." (249)

Fr. Riley's *Epikeia* also distinguishes between *excusing causes* and *epikeia* Though many might include excusing causes in the definition of *epikeia*; he states that excusing causes, such as unawareness of a law, doubt about a law, or the inability to comply with a law are not the same thing as *epikeia* strictly speaking.

> "It is extremely difficult to determine the relationship which exists between *epikeia* and deviation from the law based on the existence of "excusing causes," precisely because there is no general agreement as to the meaning or ambit of "excusing causes." (250)

> "Thirdly, as Chelodi points out, excuse practically always has immediate reference to the subject – he is not aware of the law, or he is doubtful about it, or he is unable to comply with it, etc. But the basis of *epikeia* is found, in the final analysis, not in the subject but rather in the law itself, or, more precisely, in the lawmaker." (251)

> "However, Van Hove goes on to say that not a few modern authors – D' Annibale, for example – restrict the use of *epikeia* to that sole case in which by reason of an altogether extraordinary circumstance the legislator is presumed to have been unwilling to include that case in his law. Hence, they do not call it *epikeia* whenever obligation is lacking on account of the lack of power in the legislator or even on account of the lack of intention in the legislator or on account of the commonly admitted causes excusing from law." (252)

In regard to natural law, Fr. Riley states that *epikeia* can never be used, as stated in the first passage below. However, as shown in the other passages below, he states that it is possible for the formula in which certain natural precepts are expressed to be defective because they may be expressed in a universal and inadequate way. He also states in the last passage that it is

possible for *epikeia* to apply to a positive law that determines the circumstances under which a precept of the natural law is to be fulfilled.

> "The essential relations which an individual bears toward God, neighbor and self remain forever immutable, being founded on the order of created nature. Hence, the law which regulates those relations is likewise immutable, and therefore admits of no exception by dispensation, *epikeia* or any other institute. For the content of that law is precisely what is exacted by the very nature of man according to his three-fold relation toward God, neighbor and self. One must conclude, then, that when there is question of a command or a prohibition arising from such a law, no individual, for any reason whatsoever, may ever consider the use of *epikeia* licit." (277)

> "It is to be admitted, of course, that the universal formulae in which certain natural precepts are expressed, frequently become defective precisely by reason of their universal and inadequate statements of the law. But it must be emphasized that in such instances it is the formulae which are deficient. The law itself is never deficient, for it is, in the final analysis, the dictate of natural reason based proximately on human reason and ultimately on the divine essence, as to what must be done and what must be avoided in each set of circumstances with which an individual is confronted." (282-283)

> "Finally, in regard to a positive law which determines when, and under what circumstances, an affirmative precept of the natural law is to be fulfilled, it is possible that *epikeia* may sometimes be used. But it should be clearly understood that in such a case the *epikeia* has reference to the positive aspect of the law, and not to the natural law itself." (285)

In the introduction to his chapter on *epikeia's* applicability to divine positive law, Fr Riley makes it clear that he is only using the term *epikeia* as he has strictly defined it and not in the way it

has been historically understood. For instance, the previous definition given in Fr. Koch's *A Handbook of Moral Theology* states that *epikeia* applies to divine positive law and this would seem to be considered as inaccurate by Fr. Riley. Fr. Koch, like many others, used the term, *epikeia,* in the broad sense of the word, including in it such concepts as interpretation according to the mind of the lawgiver and cessation of divine positive law. While Fr. Riley states that divine positive laws admits of interpretation according to the mind of the lawgiver and can also cease to bind in certain cases, he explains that these things are not called *epikeia* in the strict sense of the word.

> "At the outset, it should be noted that the term *epikeia* is here understood in a strict and proper sense. That the expression historically was applied to exceptions based not only on the presumed unwillingness of the legislator to include in his law a particular case, but likewise on his lack of power to do so, has been explained in numerous places in the earlier part of this dissertation. The reasons which seem to justify the restriction of the term to matters involving only the will of the legislator have been discussed in a previous chapter. Suffice it, then, to point out again that the observations in this section will concern *epikeia* only in its strict sense." (320)

In regard to divine positive law, Fr. Riley and some of the theologians he cites state that *epikeia* is not applicable. However, he and these other theologians acknowledge that exceptions to the words of divine positive law do occur, which seem similar to *epikeia*, but do not fall under the definition of *epikeia;* such as intrinsic cessation of law. The accounts of David and the loaves of proposition and the Apostles plucking of corn on the Sabbath are, for instance, a couple examples of intrinsic cessation to divine positive law (Riley, 370-372).

> "It cannot be denied that the divine positive law, even as the natural law, admits of interpretation. Sedulous attention, however, should be accorded to the distinction between *epikeia* and interpretation strictly so-called. It is one thing to clarify language that is obscure, to inspect

> carefully the statute itself and to seek *contained therein*, by logical reasoning and by means of certain specific aids proper to interpretation, the mind of the lawgiver; it is quite another thing to seek the will of the legislator not only outside his legal formula but even contrary to it. Moreover, one must not lose sight of the fact that interpretation can make use of aids extrinsic to the law itself which is being interpreted. It may happen that the real sense of the law cannot be understood from a consideration merely of the etymological and literal meaning of the words nor even from the context of the precept. Recourse, for example, to an examination of laws by the same legislator dealing with the same or kindred matters may become helpful or even necessary. But, in any event it remains interpretation strictly understood, as long as it concerns the mind of the lawgiver as *contained in his law*." (323)

> "We should further note that cessation of the obligation of divine positive law sometimes occurs. For example, if it is absolutely impossible, either physically or spiritually, for one to observe a divine positive law in a particular case, then for that individual in such a case the divine positive law ceases to bind. It would be repugnant for God to insist on the obligation." (322)

In regards to invalidating laws, Fr. Riley also concludes that *epikeia*, strictly speaking, does not apply. However, he explains that, though *epikeia* doesn't apply, invalidating laws do cease to bind in some cases and the acts that would have normally been invalid by such a law, actually become valid.

> "Now, when a precept, though normally and in itself useful and commendable, becomes defective in such wise that obedience to it would result in harm to the community – spiritual harm in the case of an ecclesiastical precept – then the binding force of that precept, which in the final analysis is conditioned upon its moral goodness and the power of the legislator to enact it, ceases." (412)

"It can sometimes happen that circumstances give rise to an encumbrance extrinsically connected with the observance of an invalidating law, which encumbrance is entirely out of proportion with the good intended, and with the gravity of the precept. That this is possible cannot be denied. Nor is it any less incontrovertible that in such an instance the legislator would in justice be unable to demand observance of his law. As a result, the invalidating law would cease, and it would therefrom follow that the act which originally would have been valid except for the intervention of the positive law, now actually becomes valid due to the cessation of that law." (413)

"In short, insistence upon the binding force of these invalidating laws under all circumstances would be directly contrary to the very purpose for which Christ founded the Church – to continue His mission of saving souls. To state that in such a situation the Church has not the power to demand the observance of a purely ecclesiastical law, though it may be invalidating, is simply to state that the Church has not the power to act contrary to the purpose for which it was established by Our Lord.

More specific reference should here be made to the principle concerning the intrinsic cessation of human laws. When the adequate (that is, the total and not merely the partial) purpose of a law ceases contrarily either for the community or for an individual – in other words, when observance of the law would be harmful, injurious or excessively difficult – the law itself ceases. There is no sound reason why it should be denied that this principle applies to invalidating, as well as to other laws. It is indeed true that by reason of the nature of invalidating laws this principle will perhaps be employed far less frequently in their regard. But the possibility of application cannot be denied. Nor can any objection be raised on the score that invalidating laws are founded upon a presumption of universal danger. For it is true, as Van Hove clearly points out, that even when there is question of only an individual case (and therefore *a fortiori* in regard to cases involving many people) the principle can be applied even to a law

which is based on a presumption of universal danger, for canon 21 intended only to prevent one from withdrawing from such a law because in an individual case, the danger on which the law is founded, is non existent.

In fine, if it can be established that an invalidating law becomes harmful or excessively difficult, it must be concluded that that invalidating law ceases. And that at times an invalidating law does become harmful and excessively difficult would seem to follow from the explanations and examples adduced in the foregoing, where the endeavor was made to prove that insistence upon the observance of an invalidating law would at times involve disproportionate difficulty, a transgression of a higher law, a confiscation of basic natural rights and an injury to the community.

We may conclude with a repetition of the two statements made at the outset of this discussion. (1) Any human law ceases to bind when it would be beyond the power of the legislator to urge its obligation. (2) Now, in point of fact, there are times when it is beyond the power of a human legislator to urge the obligation of his invalidating law. It would seem that the reasons adduced prove the truth of these assertions. If that be so, then the conclusion is obvious – there are times when a human invalidating law ceases to bind." (422-424)

"A further objection has reference to an extraordinary faculty granted on December 18, 1872 by the Holy Office, whereby certain Christians departing for far distant lands were dispensed in advance from the impediments which would arise, should they desire to contract marriage with infidels or with persons whom they baptized. Does not this prove that the Church does not consider invalidating laws to cease even in cases of extreme difficulty?" (430)

Many people may generally understand any exception to the letter of law as being *epikeia*. According to the strict definition used by Fr. Riley, *epikeia* is just one type of the several types of exceptions. These exceptions sometimes have very slight, almost

indistinguishable, differences from *epikeia*. It is necessary to keep this in mind when presented with citations from Fr. Riley's *Epikeia* concerning circumstances and types of laws for which *epikeia* cannot be resorted to. Since most people think of *epikeia* in a very broad sense, that includes almost every type of exception, it would be very easy for someone to misunderstand that when a passage from Fr. Riley's book states that *epikeia* is not applicable to a law or circumstance, he is not necessarily saying that there are no exceptions to the words of the law or that circumstance.

Epikeia and Ecclesiastical Law

What should have been apparent from the preceding section is that the claim that *epikeia* refers only to civil laws is simply false. Mrs. Linaburg asserts this claim, but does not provide a single citation to support it. She has simply made it up. All she offers are two of her own examples of situations in which she believes *epikeia* would apply to civil law. That *epikeia*, in the broad and strict sense of the word, applies to ecclesiastical law should already be obvious from the passages of Fr. Riley's *Epikeia* presented in the previous section, and it should be obvious to anyone who has read his book, or any other work on *epikeia*. That Mrs. Linaburg claims *epikeia* only applies to civil law should make one wonder whether she truly read Fr. Riley's *epikeia* at all; or whether she simply scanned through the book only in search of those passages that she thought supported her thesis.

Mrs. Linaburg's two examples of how *epikeia* might apply to civil laws, seems to be an attempt to emphasize her claim that it *only* applies to civil laws. She offers her two examples in the section under the heading of Fr. Riley's *Epikeia*. It's odd that she would resort to using only her own examples of *epikeia* when she could have chosen to cite one or more of the many examples Fr. Riley provides throughout his book. However, in contrast to Mrs. Linaburg's claim, Fr. Riley's examples of *epikeia* refer to ecclesiastical laws. The following are some examples of this.

> "A student has been given an important assignment which involves the reading of some philosophical or literary work that has been forbidden by the Church. The

> assignment must be carried out immediately, and there is no time for recourse to a Superior-or recourse has been made in writing, but the answer has not as yet been received. If there is no proximate peril of sinning, for good reason the individual could presume that it is not the intention of the Church to include this case in her law.
>
> A prospective convert under instruction by a priest, offers to the priest a forbidden book, in order that he may explain immediately certain difficulties contained therein. The priest believes that it would be ill-advised not to accede to the catechumen's request. He may licitly use *epikeia*.
>
> On the day of his first public Mass a newly ordained priest inadvertently breaks his fast. May he apply *epikeia* to the ecclesiastical precept which forbids the celebration of Mass when one's fast has been broken after midnight?
>
> When one considers the circumstances which usually surround such an occasion, it may reasonably be presumed that the Church does not wish to include such a case in her law." (191)

Those are just a few examples of *epikeia's* applicability to ecclesiastical law found throughout Fr. Riley's book. The entire book is generally geared toward ecclesiastical law. In fact, of the 450 plus pages, Fr. Riley only devotes one 3 1/2 page section to civil law. This is because, as he states, *epikeia* has no standing in civil law.

> "Only a few words need be said of *epikeia* and its relation to civil law. Over five hundred years ago, Gerson, writing of the position of *epikeia* in the external forum, pointed out that the subject of the law who has made use of this institute, must furnish proof of the lawfulness of his conduct if he is to be judged guiltless, for "before him [i.e., a human judge] there is no distinction between what is not and what appears not." It can with truth be said that this observation is particularly true of civil law, for civil law does not recognize *epikeia* – even though there is a realization that laws are sometimes deficient by reason of the universality of their expression." (236)

Not only is it odd that Mrs. Linaburg would not use Fr. Riley's examples of *epikeia*, but it is even odder that she would claim that *epikeia* refers only to civil laws when the one and only book she cites on the subject clearly states that it applies to ecclesiastical laws. This was shown to be true in the previous section, but is also briefly illustrated by the passages below.

> "*Epikeia* may be used only with greatest discretion; in the internal forum it may be applied to affirmative precepts and to negative precepts (ecclesiastical and civil), but very infrequently with regard to affirmative precepts, because the latter, binding *semper* but not *pro simper*, are more susceptible of interpretation than of *epikeia*." (459)

> "Yet, in the external forum *epikeia* may well have an indirect effect, at least insofar as ecclesiastical authority is concerned. For the plea that *epikeia* was used by the subject of the law in good faith will often be taken into consideration by an equitable Superior in evaluating the subjective guilt or innocence of him who has transgressed the words of the law." (235)

Canon Law books also reference *epikeia*, sometimes called equity. Every canon law commentary that refers to *epikeia* does so in regard to ecclesiastical law. This is because the Code of Canon Law does not refer to civil laws, (with the exception of concordats).

> "…the Code does not refer to *civil laws* at all, except in so far as concordats are concerned. Hence in interpreting the Code it would be useless to refer to civil laws, and we merely note the fact that there is no palpable trace in the New Code of "canonized" civil laws, *i.e.,* civil laws formally sanctioned by the Church." (Augustine, Vol. 1, 100)[8]

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[8] Augustine, Charles P., O.S.B., D.D. *A Commentary on the New Code of Canon Law.* 2nd Ed. Vol. I, St. Louis, MO: B. Herder Book Co., 1918.

Below are a couple examples of references to *epikeia* found in canon law books.

> "If equity among the pagans was not unimportant… much more ought equity to obtain in ecclesiastical discipline, in canon law, and in the Church. For the Church, apart from the fact that she is a mother, merciful, holy, and indulgent, has as her end the salvation of souls, the supreme law, which frequently requires the correction of certain other laws." (Cicognani, 17)[9]

> **"Epikeia.** *Epikeia* is an interpretation exempting one from the law contrary to the clear words of the law and in accordance with the mind of the legislator. It is evidently a very exceptional thing. It may be used with prudent discretion, and is justified, only in a particular case where: (a) the strict interpretation of the law would work a great hardship; and (b) in view of the usual interpretation it may be prudently conjectured that, in this particular case, the legislator would not wish the law to be strictly applied." (Bouscaren and Ellis, 33)[10]

In summary, not only did Mrs. Linaburg not provide a single source to support her claim that *epikeia* only applies to civil laws, but ecclesiastical sources show that her claim is absolutely false. Since Mrs. Linaburg's only source is Fr. Riley's *Epikeia*, the following passages from this book should help to provide an even better understanding of the nature of ecclesiastical law. It is hard not to notice that Mrs. Linaburg's strict, rigorous, severe, and malignant perspective of the ecclesiastical law and lawgiver is exactly contrary to the proper perspective shown below.

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[9] Cicognani, Amleto Giovanni. *Canon Law.* Trans. O'Hara, J.M. and Brennan, F. Philadelphia: The Dolphin Press, 1934

[10] Bouscaren, T. Lincoln, S.J., and Ellis, Adam, S.J. *Canon Law: A Text and Commentary*. Milwaukee: The Bruce Publishing Company, 1946.

> "Moreover, in the ecclesiastical legal system itself, a benign interpretation and application of law, as opposed to excessive rigor and severity, are frequently in evidence." (18)

> "There is no reason to suppose that a lawmaker in every case wishes to be as strict and as severe as he possibly can without transgressing the bounds of strict justice. Legislators are believed-and rightly so-to exercise kindness, benignity and moderation, not only from a sense of what is proper, fitting and humane, not only from a realization that a static, unanimated legal formula may sometimes be inept in applying, in certain individual cases which are clothed with peculiar circumstances, the intentions which motivated them in their enactment of the law, but also especially because in the performance of the duties of their position they should strive to imitate the mildness and forbearance characteristic of the Divine Lawgiver. Consequently, at least in some cases, they are presumed to be unwilling to bind with all possible rigor. That this is the Christ-like spirit that permeates the Church as a legislator is evident from numerous canons in the Code of Canon Law. Reference may be made to Canons 2214, §2, 2193, 2218, §1, for example. Attention may be called also to the allocution of the Holy Father to the Sacred Roman Rota in 1944, in which, referring to rules of judicial procedure, he insists upon the principle that laws are for men and not men for laws. (147)

Epikeia and the Mind of the Lawgiver

When addressing *epikeia* in its strict sense, along with other moral concepts that may be considered as *epikeia* in the broad sense, reference is often made to deducing the mind of the lawgiver. Mrs. Linaburg claims that those who refer to the mind of the lawgiver in regards to *epikeia's* applicability to ecclesiastical law are talking about the mind of God. She imports this assertion into her reading of certain quotes she's presented in regards to *epikeia*. For instance, next to a quote of St. Thomas' concerning

epikeia, Mrs. Linaburg inserts the comment that "obviously, St. Thomas is not referring to the lawgiver and mind of the lawgiver as that of Christ or His Church" (26).

Her claim about the mind of the lawgiver seems to be another premise to her claim that *epikeia* can not be used in regards to ecclesiastical law. This is also consistent with her assertion that *epikeia* only applies to civil law. She doesn't cite any source to back up her claim that St. Thomas is not referring to the lawgiver of ecclesiastical law; nor does she provide a single source to back up her claim that the mind of the lawgiver directly behind all ecclesiastical law is God.

It was already shown in the previous section that the Church teaches that *epikeia* is applicable to ecclesiastical law. This fact alone shows that Mrs. Linaburg's claims are contrary to the teachings of the Church and that her premise about the mind of the lawgiver is absolutely flawed. However, to see the flaws in this claim, one could also look at how the canon law commentaries themselves tell us the intention, or mind, of the legislator must be considered in order to properly understand ecclesiastical laws.

Here is what a few canon law commentaries say about understanding ecclesiastical law by seeking to deduce the mind of the lawgiver behind these laws.

> "The *mind of the legislator* must, of course, first and above all be deduced from the words of the law. Circumstances, context, subject, etc., also help to disclose the mind of the legislator, as well as the *ratio legis*, which is called the soul of the law. Hence the rule, "Non debet intentio verbis deservire, sed verba intentioni." (Augustine, Vol. 1, 97-98)

> "The ecclesiastical laws are to be interpreted according to the proper meaning of the terms of the law considered in their context. If the meaning of the terms remains doubtful or obscure, one must have recourse to parallel passages of the Code (if there are any), or to the purpose of the law and

> its circumstances, and the intention of the legislator (Canon 18).” (Woywod and Smith, 13)[11]
>
> *“Epikeia* is an interpretation exempting one from the law contrary to the clear words of the law and in accordance with the mind of the legislator.” (Bouscaren and Ellis, 33)

The error which is the foundation to Mrs. Linaburg’s assertions about the mind of the legislator in regards to ecclesiastical law, and which permeates all of *Authentic Illusions*, is the presumption that all ecclesiastical law is divine law, coming directly from God. This is simply false, as was shown in the introduction to this critique that those laws of the Church that make up ecclesiastical discipline are made by men, not God.

> “That ecclesiastical discipline should be subject to change is natural since it was made for men and by men.” (Boudinhon, "Ecclesiastical Discipline," 31)

It is clear that the Church, through canon law, teaches that the mind of the legislator should be deduced to properly interpret ecclesiastical laws. Consequently, it is also clear that Mrs. Linaburg unwittingly condemns Church teachings when she condemns Catholics today who refer to the mind of the legislator in regards to ecclesiastical law.

Epikeia and Assuming Authority

Another argument given in *Authentic Illusions* against using *epikeia* is that a person doing so would be assuming authority without the right to do so. Mrs. Linaburg says “First, let me say, that to presume is to assume authority without the right to do so” (p.26). The statement is inherently flawed. A subject is not assuming authority when they reasonably presume that the authority would allow or authorize a certain act. They are simply

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[11] Woywod, Stanislaus, O.F.M. *A Practical Commentary on the Code of Canon Law.* Ed. Smith, Callistus, O.F.M., J.C.L. New York: Joseph F. Wagner, Inc. 1948.

using reason to presume that the authority allows or authorizes their action. Presuming that the authority allows or authorizes something is not a claim to authority by the subject. A person would not be assuming the authority of God when they read "thou shalt not kill" and then, with the help of reason and prudence, presume that they can kill an attacker in order to defend themselves or others.

One element of *epikeia* is the idea that there are cases in which the lawgiver would not wish his law to bind, though these cases were not stated by the lawgiver. Mrs. Linaburg asserts that for a person to say that the lawgiver would not wish a law to bind to a certain circumstance is to presume and "to assume authority without the right to do so" (p.26). She is, in essence, implying that those Catholics who resort to the principle of *epikeia* today are assuming authority to judge the law. It was shown in the previous sections that the Church teaches that *epikeia* can and should be resorted to in regards to ecclesiastical laws. This is enough to show that it is false and absurd to claim that someone resorting to *epikeia* is necessarily "assuming authority without the right to do so." However, St. Thomas Aquinas also addressed this same objection. He teaches that a person who acts contrary to the letter of the law in a case of necessity is judging the particular situation and is not judging the law.

> "He who in a case of necessity acts beside the letter of the law, does not judge the law; but of a particular case in which he sees that the letter of the law is not to be observed." (ST, I-I, Q.96, Art.6, ad. 1)[12]

> "It would be passing judgment on a law to say that it was not well made; but to say that the letter of the law is not to be observed in some particular case is passing judgment not on the law, but on some particular contingency." (ST, II-II, Q.120, Art.1, ad. 2)

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[12] Aquinas, St. Thomas. *The Summa Theologica of St. Thomas Aquinas.* Trans. Fathers of the English Dominican Province. New York: Benzinger Brothers, 1913.

Fr. Riley's *Epikeia* is also consistent with St. Thomas' teaching in regards to it being necessary for a person to make judgments about certain circumstances in light of the law.

> "If a subject can make a soundly probable judgment that the circumstances of the particular case at hand are such that the legislator willed not to include it in his law, then he may deviate from the words of the law, on the strength of that presumed intention of the legislator - but only when recourse to a Superior is impossible, and when there cannot be a delay until such time as recourse becomes possible.
>
> The first part of this statement is true by reason of the fact that only a law which is known can induce obligation. "No one is bound by a precept, except insofar as he has knowledge of it." Now, even when it is not certain that the legislator willed to exclude from his law the case at hand, but there is a sound basis for the opinion to that effect, the extent of the law itself (not the words of the law) must be said to be uncertain, to be doubtful. It cannot give rise to that *scientia* which must be present in regard to a law, in order that the law to bind." (185)

Epikeia and Bestowing Power

One of Mrs. Linaburg's concluding remarks on *epikeia* is the statement that "Epikeia cannot bestow upon a priest (or bishop) the power which he does not now possess which the law has withdrawn from him. Epikeia will not restore what has been lost and no matter how grave the necessity, it can never supply this defect"(p.28). Although she doesn't cite this statement, it appears she has derived it from Fr. Riley's *Epikeia*.

> "At most, *epikeia* can excuse the individual from the precept, but it can never confer the capacity to act. It cannot bestow upon him the power which he does not now possess, nor can it restore the power which the law has withdrawn. For such bestowal or restoration of power a positive act is required." (387)

The above passage from Fr. Riley's *Epikeia* concerns the theologian Suarez's treatment on *epikeia's* applicability to invalidating laws. Suarez says that *epikeia* is not applicable to invalidating laws since *epikeia* does not bestow a particular power on a person to make an act valid, but only excuses a person from the law. It has already been pointed out that the term *epikeia* is used by Fr. Riley and other Catholic theologians in its strict sense. This is true in regards to this passage also. Though Suarez states that *epikeia* does not apply to invalidating laws, he also states that exceptions to these laws could be permitted. He is simply making the statement that, ordinarily, *epikeia alone* does not apply as an exception to the words of an invalidating law.

> "In those matters which depend on varying circumstances, scarcely any rule can be set down so universal as not to permit of some exception, if one be allowed to imagine and invent cases; and therefore, morally speaking of human matters as they happen according to the ordinary course of events, we say that an act which is invalidated simply and absolutely by law, can never by *epikeia* alone be validly performed contrary to the words of the law." (Riley, 386)

It is true that *epikeia* does not bestow a power on a priest, since it only excuses a person from the law. This is irrelevant, though, when it comes to those laws which state that jurisdiction is necessary for the licitness of the act. If *Epikeia* excuses a person from the law requiring jurisdiction for licitness, no claim would need to be made that jurisdiction is bestowed on the priest.

It is, however, relevant to invalidating laws that state that jurisdiction is a requirement for the validity of an act, such as absolution. This topic will be addressed later, but it can briefly be said that, though *epikeia,* in its strict sense, does not bestow the power of jurisdiction on a priest for valid absolution, it is possible for a priest to have the *use of jurisdiction* without actually having the *power of jurisdiction*, as taught by St. Thomas.

> "One person may act on the jurisdiction of another according to the latter's will, since matters of jurisdiction can be deputed. Since, therefore, the Church recognizes

> absolution granted by any priest at the hour of death, from this very fact a priest has the use of jurisdiction though he lack the power of jurisdiction." (ST, Suppl. Q.8, Art.6, ad.1)

Mrs. Linaburg concludes her section on *epikeia* with a bold and confident statement.

> "It can clearly be shown that epikeia can in no way be used by clergy to support their belief that the mind of the lawgiver, had he foreseen the crises in the Church, would not have stood in their way while they function outside the perimeters set by the Church." (27-28)

Though Mrs. Linaburg says this with emphatic decisiveness, absolutely nothing she provided supports this conclusion. Not a single one of her quotes from Fr. Riley's *Epikeia*, her one and only source on this topic, supports her claim in any way. Not much more can be said than that she simply just makes this stuff up as she goes. She says something is clearly shown, when it has not been shown in the least and she never attempts to explain why she thinks it's clearly shown. Among other things, this illustrates her vast misunderstanding of *epikeia* and Church laws.

IV. Holy Communion

In *Authentic Illusions*, Mrs. Linaburg claims that a person would sin by receiving Holy Communion from a priest today. This is precisely what she refers to as an "authentic illusion." What she means by this is that the Sacrament is *authentic* in that it is valid, but that it is an *illusion* because the faithful are receiving the Sacrament illicitly, thereby sinning and not receiving the grace of the Sacrament. She believes it is received illicitly today as a result of the Church laws concerning jurisdiction.

The assertion that *epikeia* doesn't apply to ecclesiastical law is a foundational premise for the claim that it would always be a sin to receive Holy Communion from a priest today. Since Mrs. Linaburg believes *epikei*a doesn't apply to ecclesiastical laws, she believes that *epikeia* can't apply to the laws of jurisdiction governing the administration and reception of Holy Communion. It has been firmly established in the previous chapter that *epikeia*, along with other moral principles which grant exceptions to the letter of the law, do apply to ecclesiastical laws. This refutes Mrs. Linaburg's foundational argument for why Holy Communion can not be administered and received today.

Since *epikeia* is a moral principle used to justify actions contrary to the letter of the law; someone intent on proving that certain actions are illicit in extraordinary circumstances would need to do more than simply point to the letter of the law created for ordinary times. If Mrs. Linaburg had acknowledged that *epikeia* did apply to ecclesiastical laws, then she could have attempted to argue why it shouldn't be applied to those laws of jurisdiction governing Holy Communion. Since she disqualifies the use of *epikeia* all-together in regards to ecclesiastical laws, she never makes an argument for why *epikeia* shouldn't be applied to these laws. There is, therefore, no argument left in *Authentic Illusions* to support the idea that it is necessarily sinful to administer and receive Holy Communion today.

There are, however, a couple of sources quoted in *Authentic Illusions* regarding Communion, which Mrs. Linaburg presents as dogma. The first quote was mislabeled by her as the "Lateran Council (1198)". This quote is, however, not from the Lateran Council or any other council. The quote is from a letter of

Pope Innocent III written to the Archbishop of Terraco on Dec. 18, 1208, titled "Eius Exemplo".

> "Therefore, we firmly believe and we confess that however honest, religious, holy, and prudent anyone may be, he cannot nor ought he to consecrate the Eucharist nor to perform the sacrifice of the altar unless he be a priest, regularly ordained by a visible and perceptible bishop. And to this office three things are necessary, as we believe: namely a certain person, that is a priest as we said above, properly established by a bishop for that office; and those solemn words which have been expressed by the holy Fathers in the canon; and the faithful intention of the one who offers himself; and so we firmly believe and declare that whosoever without the preceding Episcopal ordination, as we said above, believes and contends that he can offer the sacrifice of the Eucharist is a heretic and is a participant and companion of the perdition of Core and his followers, and he must be segregated from the entire holy Roman Church." (D424)

The formula in the letter was specifically prescribed to be professed by Durand of Osca (or Huesca) and his Waldensian companions in order for them to be received back into the Church after their decision to return from the heretical Waldensian sect. The Waldensian sect, formed in the 12th century, viewed the Catholic Church as evil and separated themselves from it. They then began their own hierarchical system, ordaining men under new forms of ordination and in direct opposition to the Catholic authorities of that time. They also claimed the Holy Ghost directly "ordained" their ministers and that no bishop was, therefore, required in ordinations. Another particular aspect of the Waldensian system was that only a bishop could consecrate the Eucharist, and not just a regular priest (Weber, "Waldenses," 528).[13]

The portion which Mrs. Linaburg has selected of Innocent III's letter is, particularly, a reference to the Waldensians

[13] Weber, Nicholas, S.M., S.T.D. "Waldenses." *The Catholic Encyclopedia*. Vol. 15. New York: Robert Appleton Company, 1912.

opposition to the Church authorities. The primary purpose of this portion was to provide a statement for former Waldensians to profess, upon returning to the Church, which would indicate that they believed the sacrifice of the Eucharist cannot be offered by someone who has not been regularly ordained, or someone simply "ordained" by the Holy Ghost, and can be offered by a regularly ordained priest, not just a bishop. It also provides a brief explanation of what a regular ordination generally consists of, primarily that which is necessary to confect the Sacrament (matter, form, and intent). It does not refer to jurisdiction directly in any way, only to validity. It's not a formal definition by any means, but merely an enumeration of all that is required to make a priest in good standing with the intention of addressing the particular opposition of the Waldensian sect.

Being that this letter of Pope Innocent III's is in regard to a heretical sect acting in direct opposition to the Church hierarchy of its time, it has no significant bearing on cases in which recourse to the Church hierarchy is impossible for an extended period of time. There is nothing in this quote that supports Mrs. Linaburg's conclusion that when it is impossible to have recourse to the Church hierarchy for an extended period of time, then all ordinations must cease by those without an office or without jurisdiction directly delegated to them. Nor is there anything in this quote that supports Mrs. Linaburg's conclusion that the sacrifice of the Eucharist should cease under the aforementioned conditions.

It is notable that in this quote, Mrs. Linaburg has interjected the word "jurisdiction" after the second use of the word "office." She has, for whatever reason, left out the portion that contained the first use of the word "office" ("And to this office…"). It is a mistake to think that "office", as used twice in this passage, is referring to a jurisdictional office. It is clear from the context, that both uses of the word "office" refer to the office of the priesthood and is not in reference to a jurisdictional office, as Mrs. Linaburg's interjection implies. By virtue of their ordination, all priests are said to be ordained into the office of the priesthood, apart from any jurisdictional office that may or may not be conferred on them. Mrs. Linaburg also makes two other interjections of her own words into this quote, which include "according to the rules and regulations" and "sent from Rome." She makes small interjections

like these, along with adding her own bold and italicized formatting to the original words of the quotes, throughout her booklet; which can subtly persuade someone to think a certain quote cited by her means what she thinks it means. These interjections and formatting of words are oftentimes misleading.

Mrs. Linaburg's mislabeling of this quote as "Lateran Council (1198)" is also very misleading since there is an obvious difference between statements made in a council and those made in a letter from a pope to a bishop, such as this was. Regardless of what dogmas may or may not be contained in this particular quote, the quote is not in itself an infallible dogma of the Church, since letters from popes to bishops have never fallen under the scope of infallibility. For this reason alone the quote becomes mostly irrelevant to Mrs. Linaburg's claim that specific Church dogma's support her thesis.

The second quote that Mrs. Linaburg presents as a dogmatic statement about Holy Communion is from Canon 20 of the Lateran Council of 649.

> "Can. 20. If anyone according to the wicked heretics in any manner whatsoever, by any word whatsoever, or at any time or place whatsoever illicitly *removing the bounds* which the holy *Fathers* of the Catholic Church *have* rather firmly *established* [Prov. 22:28], that is, the five holy and universal Synods, in order rashly to seek for novelties and expositions of another faith; or books, or letters, or writings, or subscriptions, or false testimonies, or synods, or records of deeds, or vain ordinations unknown to ecclesiastical rule; or unsuitable and irrational tenures of place; and briefly, if it is customary for the most impious heretics to do anything else, (if anyone) through diabolical operation crookedly and cunningly acts contrary to the pious preachings of the orthodox (teachers) of the Catholic Church, that is to say, its paternal and synodal proclamations, to the destruction of the most sincere confession unto the Lord our God, and persists without repentance unto the end impiously doing these things, let such a person be condemned forever, *and let all the people say: so be it, so be it* [Ps. 105:48]." (D274)

This canon states, in an elaborate way, the simple fact that heretics and schismatics are condemned to Hell if they remain unrepentant. The canons of this council were written to condemn the heretical Monothelite sect. This canon basically states that if anyone, according to the heretics, acts contrary to the pious preachings of the orthodox (teachers) of the Catholic Church, and persists without repentance, they are condemned forever. This canon includes a large portion in the middle broadly describing the actions of certain heretics and schismatics, but the overall statement is simply saying that unrepentant heretics and schismatics will go to Hell.

The portions which Mrs. Linaburg likely thinks are significant to her thesis are those which mention the words "illicitly removing the bounds" and "vain ordinations unknown to ecclesiastical rule." In these places the canon is simply stating that some heretics do illicit things, including vain ordinations unknown to ecclesiastical rule. The canon does not specify what is illicit about the things the heretics are doing or what makes their ordinations vain and unknown to ecclesiastical rule. It is not this canon's purpose to specify these things, but rather condemn unrepentant heretics.

The fact that this canon mentions heretics doing certain things illicitly in no way supports the conclusion that any act performed by a cleric under today's conditions is illicit. Few Catholics would deny that it is wrong to do something illicit, but the question at hand is whether the particular acts today are illicit, not whether it is wrong to do something illicit. Mrs. Linaburg presents a canon which says that unrepentant heretics are condemned to hell and that they do things illicitly, as if it proves that particular actions of clerics today are illicit. In doing this, she simply begs the question, reads her own conclusion into the quote, and creates a diversion that only confuses the issue.

It is beyond the scope of this critique to fully address how *epikeia* would make the administration and reception of Holy Communion licit under today's circumstances. To conclude this chapter, though, a brief explanation will be given.

From the outset it should be noted that the question of whether *epikeia* may be used in matters that touch the essence of a sacrament is irrelevant to questions of jurisdiction that govern the administration and reception of Holy Communion. Jurisdiction is

not part of the matter and form of Holy Communion, since it is only an element of law that concerns the licit use of Holy Communion and does not determine validity. The matter and form of a sacrament are what constitute the essence of a sacrament. Since jurisdiction is not part of the matter and form of Holy Communion, matters of jurisdiction do not touch the essence of Holy Communion.

> "Matter and form of a sacrament are the elements which constitute the essence of the sacrament." (Wilmers, 349)[14]

Keeping the foregoing notion in mind, one should next remember that *epikeia* is the setting aside of the letter of the law to follow the dictates of justice and the common good, as stated by St. Thomas.

> "Legislators in framing laws attend to what commonly happens: although if the law be applied to certain cases it will frustrate the equality of justice and be injurious to the common good, which the law has in view… On these and like cases it is bad to follow the law, and it is good to set aside the letter of the law and to follow the dictates of justice and the common good. This is the object of "epikeia" which we call equity. Therefore it is evident that "epikeia" is a virtue." (ST, II-II, Q.120, Art.1)

Consider, then, that the object of ecclesiastical law is the common good, or welfare, of the Christian community.

> "Ecclesiastical law therefore has for its author the head of the Christian community over which he has jurisdiction strictly so called; its object is the common welfare of that community." (Boudinhon, "Canon Law," 64)[15]

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[14] Wilmers, Wilhelm, S.J. *Handbook of the Christian Religion: For the Use of Advanced Students and the Educated Laity.* Ed. Conway, James, S.J. 3rd ed. New York: Benzinger Brothers. 1891.

[15] Boudinhon, Auguste. "Canon Law." *The Catholic Encyclopedia.* Vol. 9. New York: Robert Appleton Company, 1910.

Understanding that the object of ecclesiastical law is the common good of the Christian community and epikeia is the setting aside of the letter of the law for the common good, one then just needs to understand what is the common good of the Christian community, or the whole Church. This common good is the Sacrament of the Eucharist.

> "Matrimony is ordained to the common good as regards the body. But the common spiritual good of the whole Church is contained substantially in the sacrament itself of the Eucharist." (ST, III, Q.65, Art.65., ad.1)

In summary, the common good and object of ecclesiastical law is the Sacrament of the Eucharist. The ecclesiastical laws of jurisdiction used to govern the administration and reception of the Eucharist were framed for ordinary times. In extraordinary cases where these laws become injurious to the common good of the Christian community, where that community would perpetually deprive themselves of the Eucharist simply by following the letter of the law; it is good and virtuous for the faithful to set aside the letter of the law. The letter of the law in this case should not be followed and to do so would be sinful.

> "To follow the letter of the law when it ought not to be followed is sinful." (ST, II- II, Q.120, Art.1, ad.1)

V. Jurisdiction Delegated by Law (*a jure*)

There is a certain detail in regards to ecclesiastical jurisdiction that Mrs. Linaburg seems to have failed to notice or comprehend, as it was given little attention in *Authentic Illusions*. This miscomprehension is at the core of many of her claims. It is the fact that jurisdiction is, at times, indirectly delegated by law (*a jure*). Throughout *Authentic Illusions* it is apparent that Mrs. Linaburg believes a person can only possess jurisdiction if they either possess an office or if they had been delegated jurisdiction directly by an authoritative person. Since, in these times, it seems a person would be hard-pressed to find an ordinarily authoritative person from whence a person could be bestowed an office or from whom they might be directly delegated jurisdiction, then, to her, there seems to be no other way in which a person could possess jurisdiction. Had she understood that jurisdiction from an office or directly delegated from a person are not the only ways in which jurisdiction can be possessed, perhaps she would not have proposed much of what she does in her thesis.

There are two general classifications for jurisdiction - ordinary and delegated. Ordinary jurisdiction is that jurisdiction which comes with the possession of an office. When a person holds an office they have the jurisdiction that comes with that office and when they lose an office they lose the jurisdiction that was attached to that office. Ordinary jurisdiction has always been the most common form of jurisdiction and it is the type usually envisioned by most people when the topic of ecclesiastical jurisdiction is discussed. It is the jurisdiction used in the ordinary functioning of the Church, hence the name, "ordinary jurisdiction."

> "Ordinary jurisdiction is that which is permanently bound, by Divine or human law, with a permanent ecclesiastical office. Its possessor is called an ordinary judge. By Divine law the pope has such ordinary jurisdiction for the entire Church and a bishop for his diocese. By human law this jurisdiction is possessed by the cardinals, officials of the Curia and the congregations of cardinals, the patriarchs, primates, metropolitans, archbishops, the *praelati nullius*, and prelates with quasi-episcopal jurisdiction, the chapters

> of orders, or, respectively, the heads of orders, cathedral chapters in reference to their own affairs, the archdiaconate in the Middle Ages, and parish priests in the internal forum." (Sägmüller, "Ecclesiastical Jurisdiction," 567)[16]

Delegated jurisdiction, on the other hand, is jurisdiction that is not attached to an office and is less frequently used in the normal functioning of the Church, though it is still part of the normal way the Church functions. Delegated jurisdiction has two sub-classifications – *ab homine* (from man) and *a jure* (by law). Jurisdiction delegated *ab homine* is considered to be *direct,* since it is delegated to a specific person directly from someone duly authorized to give it. Jurisdiction which is delegated *a jure* is considered to be *indirect*, since it is indirectly delegated by the law itself. As the following passages will show, jurisdiction is conferred by the Church through laws to a person to perform an act for which they would otherwise not have had the jurisdiction to perform; regardless of whether or not that person holds an ecclesiastical office.

> "Delegated power is subject to several divisions, as the Code indicates, though the later does not contain a detailed schema on this point. By reason of the agency delegating, delegation derives *a iure* when the law itself transmits power to a determined physical or moral person, but does not constitute such a person in an office in the strict sense of the word. Delegation derives *ab homine* when power is given by way of a special commission to another by him who is empowered to act *per se* or *per alios*." (De Witt,18)[17]

> *"Delegated* jurisdiction, in contrast to ordinary, is not joined *ipso iure* with an office, but is specially

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[16] Sägmüller, Johannes Baptist. "Ecclesiastical Jurisdiction." *The Catholic Encyclopedia.* Vol. 8. New York: Robert Appleton Company, 1910.

[17] De Witt, Max George, A.B., J.C.L. *The Cessation of Delegated Power: A Canonical Commentary with Historical Notes.* Washington, D.C.: The Catholic University of America Press, 1954.

conferred on a priest (197: 1), either by law itself *(iurisdictio delegata a iure),* or by a properly authorized possessor of ordinary jurisdiction, or by a delegate of the latter *(iurisdictio delegata vel subdelegata ab homine).*

In both cases there is either *direct* delegation,—that is, immediately from the delegating person himself, or —what occurs more rarely—*indirect* delegation, by the fact that a duly authorized penitent freely chooses a priest, and by this choice is the means of the latter's obtaining jurisdiction." (Simon, 9)[18]

"Delegated jurisdiction rests either on a special authorization of the holders of ordinary jurisdiction (*delegatio ab homine*), or on a general law (*delegatio a lege, a jure, a canone*)."(Sägmüller, "Ecclesiastical Jurisdiction," 567)

"The canons distinguish between delegation *ab homine*, and delegation *a jure*. The former is that which comes from a person in the strict sense of the word; while the latter may have its source in a juridical or moral person." (Fanning, "Delegation," 696)[19]

"Ordinary power of jurisdiction is that which the law itself attaches to an office; delegated power of jurisdiction, that which is not attached to an office but is committed to a person.

This division is exhaustive and the power of jurisdiction, no matter by whom possessed, must belong to one of these two categories.

It is clear, then, that when the law attaches power to an office the power is ordinary, and when the law commits power to a person the power is delegated.

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[18] Simon, J., O.S.M. *Faculties of Pastors and Confessors for Absolution and Dispensation: According to the Code of Canon Law.* New York: Joseph F. Wagner, Inc., 1922.

[19] Fanning, William. "Delegation." *The Catholic Encyclopedia.* Vol. 4. New York: Robert Appleton Company, 1908.

> Delegated power may derive either from man or from the law. Power delegated by man is that which one person commits to another; power delegated by law is that which the law itself, in some special cases, commits to a person who lacks an ecclesiastical office." (Deutsch, 119-120)[20]
>
> "The *law itself* may grant the jurisdiction in certain circumstances as canon 882 grants to all priests jurisdiction to absolve from all sins and censures in danger of death. This is called jurisdiction *delegated by law*." (Bouscaren and Ellis, 134)

In *Authentic Illusions*, Mrs. Linaburg seems to contend that unless a cleric has ordinary jurisdiction or has jurisdiction delegated directly by a duly authorized person (*ab homine*), then they have no jurisdiction for any act whatsoever. She seems to have overlooked the fact that jurisdiction can also be received indirectly from the law (*a juris*) by one who does not hold an ecclesiastical office and was not previously delegated any jurisdiction directly from an authoritative person.

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[20] Deutsch, Bernard F., J.C.L. *Jurisdiction of Pastors in the External Forum.* Washington, D.C.: The Catholic University of America Press, 1957.

VI. Excommunication and Canon 2261

Throughout *Authentic Illusions*, Mrs. Linaburg states and implies various points in regards to excommunication and a few in regards to canon 2261 of the 1917 Code. She has made it difficult, however, to know exactly what her understanding is of the aspects of excommunication and canon 2261, and what point or points she is trying to get across to the reader. The difficulty comes from her overall lack, or extreme minimal use, of clearly stated conclusions, explanations, and reasons for the claims she is intending to put forth. Her inclusion of quotes and various statements on excommunication and canon 2261 do make it clear, though, that she is trying to make certain points on these things in relation to her overall thesis.

One example of this can be found partway through page 19 of *Authentic Illusions* where Mrs. Linaburg begins quoting St. Thomas Aquinas in regards to certain aspects of excommunication. The first of these quotes (ST, III, Q64, Art.6, ad.2) discusses how excommunicated persons sin by administering sacraments, along with those who communicate in their sin by receiving sacraments from them. She follows this with another quote which explains that because a man sins by receiving sacraments from an excommunicate, "he does not receive the reality of the sacrament, unless ignorance excuses him." (ST, III, Q64, Art.9, ad.3). It seems that the point Mrs. Linaburg is likely trying to make, relative to her thesis, is that most or all priests today are excommunicated and, therefore, every person who receives sacraments from them would be sinning and not receiving the reality of a sacrament, unless ignorance excused them. This, again, defines what she means by "authentic illusions."

Whether or not a person is receiving the reality of a sacrament, in this case, depends on whether they are sinning when receiving it. Along with St. Thomas' teachings, there are many teachings from the Church and Her other theologians that help to form a more complete understanding of this issue. Even St. Thomas' statement here, though, provides a key point to this understanding, which Mrs. Linaburg may have overlooked. In the text of the statement of St. Thomas, which she quotes, St. Thomas says that as long as a priest is "tolerated," the person who receives

a sacrament from him does not communicate in his sins, but communicates with the Church. A person sins in receiving sacraments from a priest if the Church "does not tolerate him."

> "He who approaches a sacrament, receives it from a minister of the Church, not because he is such and such a man, but because he is a minister of the Church. Consequently, as long as the latter is tolerated in the ministry, he that receives a sacrament from him, does not communicate in his sin, but communicates with the Church from whom he has his ministry. But if the Church, by degrading, excommunicating, or suspending him, does not tolerate him in the ministry, he that receives a sacrament from him sins, because he communicates in his sin." (ST, III, Q64, Art.6, ad.2)

The Church teaches that there are excommunicates who are tolerated by the Church; that cases do exist in which these excommunicates are allowed to administer sacraments to the Faithful; and that during these cases the faithful are allowed to receive sacraments from them without sinning. This chapter will illustrate this point by discussing excommunication, canon 2261, and Mrs. Linaburg's errors in regard to these.

The Vitandi & Tolerati

Throughout canon law there are many references to *tolerati* excommunicates (tolerated by the Church) and *vitandi* excommunicates (to be avoided). These distinctions are highly relevant to the faithful today, particularly in regards to receiving sacraments from excommunicates. Just exactly what the difference is between a *vitandus* and a *toleratus* excommunicate can be found in canon 2258.

> "In Canon 2258, §2, the Code lays down the conditions which are required to constitute a person a *vitandus* under the present discipline. The canon states that no one is *vitandus*, unless he has been nominally excommunicated by the Holy See, unless the

> excommunication has been publicly declared and unless in the decree or sentence of excommunication it is expressly stated that he must be avoided. Hence, four conditions are required to constitute a person *vitandus*. In the first place, he must be *nominally* excommunicated, that is, he must be excommunicated by name, or, at least, in such a manner that he cannot be confounded with others. Secondly, he must be excommunicated by the Apostolic See. By the term *Apostolic See* in the canon is to be understood not only the Pope, but also the Congregations, Tribunals and Offices through which the Holy Father is wont to transact the business of the universal Church. Hence, no authority inferior to the Apostolic See can render a person a *vitandus*: the Holy See alone can do so, and, it may be added, very seldom resorts to such a drastic measure. Thirdly, it is required that the excommunication be *publicly declared*. This could be done by publishing it in the *Acta Apostolicae Sedis*, or by affixing notice of it in some public place, in a word, by any means, according to the circumstances of time and place, that will bring knowledge of the fact to the faithful. Finally, it is necessary that it be expressly stated in the decree or sentence of excommunication that the excommunicated person must be avoided. All four conditions must concur in one and the same case to constitute a person a *vitandus*; if any one of them be wanting, the excommunicate is not a *vitandus*." (Hyland, 45-46)[21]

In summary of the above, there are four required conditions for a person to be *vitandus*:

1 .He must be excommunicated by name.

2. The Apostolic See must issue this excommunication naming this person.

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[21] Hyland, Francis Edward, J.C.L. *Excommunication: It's Nature, Historical Development, and Effects.* Washington, D.C.: The Catholic University of America Press, 1928.

3. The excommunication naming this person must be publicly announced by the Apostolic See.

4. This sentence or decree must expressly state that the named excommunicated person must be avoided

If one of these conditions is not met concerning any person under excommunication, that person is not a *vitand*us, and can only be considered as a *toleratus*.

This distinction between the *vitandi* and *tolerati* is important for Catholics to understand as they read about canon laws, such as canon 2261. This canon allows the faithful to receive sacraments and sacramentals from excommunicates for any just reason, as long as the excommunicate is not a *vitandus* and has not been issued a declaratory or condemnatory sentence from the Church. Though Mrs. Linaburg's treatment of canon 2261 will be discussed later, here is an explanation of this particular part of canon 2261 that references the *vitandi* and *tolerati*.

> "Canon 2261, §2 has reference to petitioning the sacraments and sacramentals from excommunicates who are neither *vitandus*, nor *tolerates* against whom any sentence, either declaratory or condemnatory, has been issued. They will be spoken of as the *simpliciter tolerati*. For any just reason, the faithful may request a *simpliciter toleratus* to administer the sacraments and sacramentals, especially when there are no other ministers available. When so requested, the excommunicate may administer the sacraments and sacramentals and he is not obliged to inquire why the petitioner wishes to receive them. The principle reason for which the faithful may ask the sacraments and sacramentals from a *simpliciter toleratus* is the absence of other ministers. However, it is not the only reason; any just cause will suffice; a grave cause is not required. As examples of just causes which will permit the faithful to request the sacraments and sacramentals from a *simpliciter tolerates* may be mentioned, the earlier conferring of Baptism, the dispelling of a doubt concerning the gravity of a sin, the intention of approaching Holy Communion with greater purity of soul, the intention of

> receiving the Holy Eucharist more frequently, etc." (Hyland, 91-92)

Major and Minor Excommunication

The Church had at one time made a distinction between what was known as *major excommunication* and *minor excommunication*, and it seems that Mrs. Linaburg has confused this with the concept of the *vitandi* and *tolerati*. She quotes St. Thomas on pages 19 and 20 of *Authentic Illusions* regarding the difference between *major* and *minor excommunications*. These quotes state that a person under *minor excommunication* is deprived of the sacraments, but is not deprived of the communion of the faithful. They further state that it is lawful to communicate with a person under *minor excommunication*, but a person under *major excommunication* is deprived of communion with the faithful and it is not lawful to communicate with this person. Mrs. Linaburg seems to be using these quotes in an attempt to show that the only excommunicates tolerated by the Church are those that are under *minor excommunication*. It seems that she is trying to equate *minor excommunication* to persons that are *tolerati* and *major excommunication* to persons who are *vitandi*.

In reality, though, the distinction between *minor* and *major excommunications* has no bearing on her thesis or on any practical issue for Catholics today for one simple reason - *minor excommunications* officially ceased to exist in 1884. This is an historical fact, as stated in the 1909 section of the Catholic Encyclopedia on Excommunication.

> "…little attention was paid to minor excommunication, and eventually it ceased to exist after the publication of the Constitution "Apostolicæ Sedis". The latter declared that all excommunications *latæ sententiæ* that it did not mention were abolished, and as it was silent concerning minor excommunication (by its nature an excommunication *latæ sententiæ* of a special kind), canonists concluded that minor excommunication no longer existed. This conclusion was

> formally ratified by the Holy Office (6 Jan., 1884, ad 4)." (Boudinhon, "Excommunication," 680)[22]
>
> "Major excommunication, which remains now the only kind in force, is therefore the kind of which we treat…" (680)

Therefore, since 1884 all reference to excommunication in Church legislation, including canon law, is speaking of *major excommunication*, since *minor excommunication* no longer exists. When canon laws from the 1917 Code, such as canon 2261, distinguish between excommunicated persons that are *tolerati* and those that are *vitandus* it is not the same as a distinction between *minor excommunication* and *major excommunication* because all excommunications since 1884 are *major excommunications*. The *tolerat*i and the *vitandus* are both persons under *major excommunication.* This is illustrated by the fact that even Protestants, who are no doubt under *major excommunication,* fall under the class of *tolerati*.

> "Every excommunicated person is deprived of the indulgences and of his share in the public prayers of the Church. The faithful, however, may privately pray for the excommunicated and a priest may privately apply Holy Mass for their intentions, provided that no scandal is given (Canon 2262). As Protestants fall under the class of the excommunicati tolerati, the Code allows Holy Mass to be applied for their intentions; but privately only." (Woywod, "Ecclesiastical Censures in The New Code," 303)[23]

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[22] Boudinhon, Auguste. "Excommunication." *The Catholic Encyclopedia.* Vol. 5. New York: Robert Appleton Company, 1909.

[23] Woywod, Stanislaus, O.F.M. "Ecclesiastical Censures in the New Code." *The Ecclesiastical Review: A Monthly Publication for the Clergy.* Vol. 58, March. Philadelphia: American Ecclesiastical Review and The Dolphin Press, 1918.

The *Tolerati* and Sentences

Even after someone understands the difference between the *vitandi* and *tolerati*, they might also notice, and be concerned about, canon laws distinguishing between *tolerati* that have been issued a declaratory or condemnatory sentence (*tolerati sententiati*) and those *tolerati* to whom the Church has not issued a sentence (*tolerati non-sententiati* or *simpliciter tolerati*). Mrs. Linaburg presents these particular distinctions on Pages 15 and 16 of *Authentic Illusions* by quoting the 1956 book *The Pastoral Companion*.

Along with explaining the difference between the *vitandi* and *tolerati*, her quotes from *The Pastoral Companion* also explain that there are two types of *tolerati – tolerati sententiati* and *tolerati non-sententiati*. The *tolerati non-sententiati* are those persons who are excommunicated, but whose excommunication has not been recognized by an ecclesiastical superior. They are, in other words, persons who have not received an official sentence from an ecclesiastical superior. The *tolerati sententiati* are, on the other hand, persons who have received an official sentence from an ecclesiastical superior.

There are two types of official sentences which the *tolerati sententiati* would have received from an ecclesiastical superior to be considered *tolerati sententiati* – a *declaratory sentence* or a *condemnatory sentence*. Until an excommunicated *tolerati* person has officially received one of these two sentences from an ecclesiastical superior, they are not considered *tolerati sententiati*. So, until an excommunicated person is publicly decreed by name by the Apostolic See to be excommunicated and avoided or until an excommunicated person has received some kind of official sentence of excommunication from an ecclesiastical superior, the person remains excommunicated *tolerati non-sententiati*, or *simpliciter tolerati*.

It is difficult to say exactly how Mrs. Linaburg has understood the book she cites and these distinctions of excommunicated persons. She offers no clarification in her own words as to what she thinks these things mean. She only makes the comment that those who marry outside the Church are an example of the *tolerati non-sententiati*.

Following her quotes about the definitions of *vitandus*, *tolerati sententiati*, and *tolerati non-sententiati*, she provides a few more quotes which focus on and emphasize aspects of the *tolerati sententiati.* From her choice of quotes and by the order in which she places them it seems fair to say that she is attempting to demonstrate that a person can be an excommunicate *tolerati sententiati* without ever having received an official sentence from an ecclesiastical superior. The likelihood that this is her belief is supported by the fact that she believes there are currently no known ecclesiastical superiors to issue an official sentence of excommunication against a person. In light of that, it would be a moot point for her to emphasize the *tolerati sententiati* if she believed no one could possibly be *tolerati sententiati* without the known existence of ecclesiastical superiors. It is an error, however, to believe that any person can be a *tolerati sententiati* without ever having received an official sentence from an ecclesiastical superior.

It's likely that Mrs. Linaburg misunderstands the notion of a *declaratory sentence* and that she is using it to try to show that a person can be considered *tolerati sententiati,* without them ever having to have received an official sentence from an ecclesiastical superior. Her last quote in regards to excommunication in this section deals with the *condemnatory* and *declaratory* types of sentences. Concerning the declaratory sentence, she quotes:

> "In the declaratory sentence, the law itself has already inflicted the penalty immediately on the breaking of the law, and the court in which the offender is arraigned merely declares that it has found the person guilty, and that therefore he has incurred a certain penalty of the law." (Woywod and Smith, 31)

If read quickly and rashly, someone might get the idea that this passage says a person immediately incurs a *declaratory sentence*, making them a *tolerati sententiati*, once they break an excommunicating law that inflicts an immediate *penalty*. Someone who understands the passage in this manner would then be consistent in saying that a person can become a *tolerati sententiati* even though there were no known ecclesiastical superiors to issue an official sentence of excommunication. Though they would be

consistent in their beliefs, they would be in error due to their misunderstanding of the quote.

This particular quote provided by Mrs. Linaburg only states that a law itself may inflict a *penalty* immediately on breaking the law, but it does not say that a law itself can inflict a *declaratory sentence*. The penalty and *declaratory sentence* are two separate things. The *declaratory sentence* only comes from a court or ecclesiastical superior. It is simply a type of sentence that states that a penalty has been incurred prior to the issuance of the *declaratory sentence*. It is only different from the *condemnatory sentence* in that the *condemnatory sentence* would be a type of sentence that dealt with a law that did not inflict a penalty immediately upon it being broken. The *declaratory sentence* is not incurred when the *penalty* is incurred, prior to the actual issuance of the *declaratory sentence* by the Church.

> "…a declaratory sentence does not impose a penalty; it officially proclaims that a penalty has already been incurred; consequently, the delinquent was under the penalty prior to the sentence." (Hyland, 51-52)

A person can in no possible way be considered *tolerati sententiati* without an ecclesiastical superior officially issuing some form of sentence against them. If there are currently no known ecclesiastical superior's, then every person who breaks an excommunicating law today are *tolerati non-sententiati*, or *simpliciter tolerati*, until some future ecclesiastical superior issues a sentence against them.

Canon 2261

Canon 2261 of the 1917 Code prohibits excommunicated persons from administering the sacraments and sacramentals, but also makes exceptions, which authorize excommunicated persons to administer the sacraments and sacramentals in certain instances.

> "However, there are *exceptions* stated in our canon, and consequently the penalty and irregularity just

> mentioned do not affect those administering the Sacraments under such circumstances. The exceptions are:
>
> 1. *Provided the minister is not a vitandus or under a declaratory or condemnatory sentence, the faithful may, for any just, reason, ask him to administer the Sacraments and sacramentals to them*. This is more especially true if no other minister is available, in which case the excommunicated minister thus asked may administer the Sacraments and sacramentals without as much as inquiring for the reason why the petitioner wishes to receive them. Hence the faithful are to judge in such cases whether the reason is just. Any reason may be called just which promotes devotion or wards off temptations or is prompted by real convenience, for instance, if one does not like to call another minister.
>
> This mitigation - such it is even in comparison with Martin V s decree "*Ad evitanda*" - is accorded only in case the minister is not vitandus nor under a declaratory or condemnatory sentence, according to
>
> 2. The second exception. If the minister, i. e., priest, is a *vitandus or excommunicated in virtue of a condemnatory or declaratory sentence*, the faithful may demand from him absolution in danger of death, even *though other priests be present who are not excommunicated*, but *other Sacraments or sacramentals they may receive* from such a priest only *if no other ministers are available*." [original emphasis] (Augustine, Vol.VIII, 182-183)

Mrs. Linaburg refers to this canon as a loophole used to fool the faithful today, implying that it has been misused in someway.

> "They are fond of using Canon 209 and Canon 2261 as their loopholes to fool us." (25)

She also states that she will show that this canon doesn't apply to priests today and that it is erroneous for the priests to think such a thing.

> "Epikeia being one that has already been shown, doesn't apply to them, and Canon 209 and 2261 that I will show doesn't apply to them either, thereby closing all their escape routes (hopefully)." (34)

> "Another favorite Canon that these priests think (erroneously) pertains to them is Canon 2261…" (39)

In what particular way she believes canon 2261 was misused or in what way it was used by others debating with her may never be known. Regarding this canon, Mrs. Linaburg never offers the arguments she claims to be refuting and she never offers an argument of her own. She hardly makes any other claim as to why this doesn't apply, beyond simply saying that it just doesn't.

Her one assertion is that this canon does not apply "to these priests who have not been sent" (Linaburg, 40). In other words, she is saying that this canon does not apply to a priest who never had jurisdiction. However, none of her citations concerning canon 2261, nor any of her other citations throughout the rest of *Authentic Illusions*, say or support what she asserts. Nowhere can it be found that this canon and other canon laws don't apply to those who never had jurisdiction. She has fabricated this idea out of nothing. It is her own fabricated puzzle piece that is necessary to make her thesis appear true. Without this unsupported, invented idea, her thesis fails.

There are only two quotes in *Authentic Illusions*, which specifically address canon 2261. Following her comment that priests today are in error for thinking this canon applies to them, Mrs. Linaburg quotes a passage that simply presents the canon. It is not exactly clear what her source is for this, as she does not actually cite the source, but that is irrelevant as it is generally consistent with any canon law commentary. After this, she offers her second, and last, quote in regards to canon 2261. This is a passage from Fr. Ramsteirn's 1947 book *Manual of Canon Law*. Like the first quote, this one also simply states the canon in its general terms. Mrs. Linaburg does, however, provide a clue to the argument, or point, she is trying to make from her second quote by adding emphasis to a particular set of words.

> "But the faithful are permitted to ask the sacraments and sacramentals from an excommunicated priest *who has not been sentenced*; not if he has received court sentence save they be in danger of death." (40)

From her emphasis here of the words *"who has not been sentenced*" and from the way she previously addressed the subject of excommunication, it is clear that she has taken her misunderstanding of excommunication sentences and applied it to canon 2261. It is apparent that she thinks this canon doesn't apply to priests today because she believes they have been sentenced. The claim that most priests today have been sentenced is false as was previously shown and as is also shown by her quote, which refers to receiving a sentence from a court.

Since the issue of excommunication and sentences has already been addressed, little more needs to be said about it here. However, to add more clarity and further confirm what has been said, it only needs to be pointed out that the Church includes heretics as *tolerati* persons from whom the faithful may receive sacraments in cases of necessity.

The next couple of quotes below come from the 1932 book, *The Delict of Heresy*. These are all taken from the books section, "Heresy and Official Status and Actions." Here, Fr. MacKenzie refers to canon 2261's use in regards to heretics (since heresy is the subject of his book). It is clearly shown that the *tolerati non-sententiati,* whom may administer sacraments to the faithful when they request it, includes heretics.

> "…the second and third sections of canon 2261 provide for the delinquents administration of Sacraments in certain special cases. This provision is not intended as a favor to the delinquent himself, but rather as a means of making the Sacraments more available to the faithful, especially in urgent cases." (MacKenzie, 78)[24]

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[24] MacKenzie, Eric F., A.M., S.T.L., J.C.L. *The Delict of Heresy: In its Commision, Penalization, Absolution*. Washington, D.C.: The Catholic University of America Press, 1932.

> "When the priest or other cleric is excommunicated, but has not received either a declaratory or condemnatory sentence, the faithful are permitted to ask and receive from him any Sacrament or Sacramental, especially if other ministers are absent. In these circumstances the said minister is free to administer to the faithful, and does not thereby violate the censure of which he is conscious. The faithful are required to have a just cause for their request, but canonists do not require that it be a serious (gravis) cause; the earlier conferring of Baptism, the dispelling of doubt concerning the gravity of a sin and the state of conscious, the desire for greater purity of soul when approaching the Holy Table, or the wish to communicate more frequently, have been recognized as just causes for requesting Sacraments even from priests known to be under simple censure. Meanwhile the minister is not required to investigate the reasons impelling the faithful to approach him, nor to verify the justice of their reasons. On being asked to administer a Sacrament, he is immediately free (ratione censurae) to do so. Even more, canonists do not require him to wait for an explicit request. Any implicit or reasonably presumed petition will be sufficient. Hence, when no other minister is available, a priest who is consciously guilty of a delict of heresy may go to Church, and show himself as ready to hear Confessions at the regular hours to distribute Communion and celebrate Mass when the faithful gather for these purposes." (MacKenzie, 79)

In summary, Mrs. Linaburg's arguments against the use of canon 2261 boil down to two false fabrications. First, she implies that the canon doesn't apply to priests today because they are under a sentence, which was shown to be a false idea based on her own misunderstanding of excommunication and sentences. Secondly, she makes up the idea completely out of thin air, without providing a single supporting source, that canons such as 2261 don't apply to priests that never had jurisdiction. Nowhere is this taught by the Church. Canon laws apply to all baptized persons as many books on the subject state.

> "'To Christians' – that is, baptised persons are *subject* of canon law; and that without reference to the question whether they are or are not obedient to the Church and within her pale." (Addis, 103)[25]

Through canon 2261 the Church authorizes all excommunicated priests (*tolerati non-sententiati* or *simpliciter toerati*), even those who are heretics, outside of the pale of the Church, and conscience of their censure; to administer sacraments to the faithful when the faithful are in need of the sacraments. Because of their excommunication, these priests lack jurisdiction to administer the sacraments, but through this canon they are yet authorized to act in certain cases. This all illustrates the benign mind of the legislator, not wishing ecclesiastical laws to deprive the faithful of the sacraments when they could only receive them from priests who are cut-off from the Church.

[25] Addis, William E., and Arnold, Thomas, M.A. *A Catholic Dictionary: Containing Some Account of the Doctrine, Discipline, Rites, Ceremonies, Councils, and Religious Orders of the Catholic Church.* 2nd ed. London: Kegan Paul, Trench, & Co., 1884.

VII. Supplied Jurisdiction and Canon 209

Canon 209 of the 1917 Code states that "in common error or in positive and probable doubt of law or fact, the Church supplies jurisdiction for both the external and internal forum" (Bouscaren and Ellis, 141). As with canon 2261, Mrs. Linaburg refers to canon 209 as one of the "loopholes used to fool us" (p.25). In doing so, she is implying that, along with canon 2261, canon 209 has also been misused in someway.

Again, like canon 2261, in what particular way she believes canon 209 was misused or in what way it was used by others debating her remains a mystery. Regarding canon 209 Mrs. Linaburg never offers the arguments she claims to be refuting and she never gives an argument of her own. She only ever asserts her conclusions, before and after a chunk of quotes taken from Fr. Miaskiewics' *Supplied Jurisdiction According to Canon 209*.[26] In doing this, she implies that the quotes are the premises that support her conclusions; or that they explicitly state what she states in her conclusions. However, hardly anything she cites is relevant to her claims and none of what she cites states or supports her conclusions in any way.

Her conclusion, in broad terms, is that canon 209 does not apply to priests today. She insists that she has shown that *epikeia* doesn't apply to priests and the faithful today and that she will also show that canon 209, along with 2261, doesn't apply to them either, "thereby closing all their escape routes (hopefully)" (p.34). The reason canon 209 doesn't apply to the priests and faithful today, according to Mrs. Linaburg, is because:

1. The Church has already condemned their acts (34).

2. The Church cannot grant jurisdiction to them because they are thieves and robbers (34).

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[26] Miaskiewics, Francis Sigismund, J.C.L. *Supplied Jurisdiction According to Canon 209: A Historical Synopsis and Commentary*. Washington, D.C.: The Catholic University of America Press, 1940.

3. The Church cannot supply jurisdiction to priests the Church never sent in the first place (34).

These three statements comprise all that she offers in her own words as to reasons why canon 209 doesn't apply to the circumstances today. If it is not obvious at first glance, it should be obvious under closer inspection that these apparent premises are essentially the same as her conclusion. Mrs. Linaburg is simply stating her conclusion in the form of premises to support her conclusion. In other words, she is presuming her conclusion, begging the question, and employing circular logic. The very question to be answered is whether canon 209 would allow acts to be performed that would otherwise be condemned. The question of whether they are "thieves and robbers" or are "not sent" depends on whether the Church would allow them to act without jurisdiction for certain acts or whether the Church grants them jurisdiction for other acts by canon 209.

Beyond her circular reasoning the things she cites neither support nor state what she claims. For instance, no where does any of her citations state that the Church cannot supply jurisdiction to a priest never sent in the first place or a priest that never had jurisdiction. As a matter of fact, Fr. Miaskiewics' book on the subject contradicts Mrs. Linaburg by saying that canon 209 can supply jurisdiction to a person who up to that point did not have any.

> "Canon 209 is an instance in the Code which reveals that the Church does supply in conditions of common error or of a positive and probable doubt of fact or of law. In virtue of this supplying, the Church may grant jurisdiction to one who until now has not possessed any, or to one who has some jurisdictional power but receives an extension of the same." (Miaskiewics, 25)

> "When a person makes reference to the operation of the suppletory principle, he means that the power of jurisdiction which must be present for the validity of a certain act is wanting, and the Church must make up for this deficiency at the moment of the performance of the jurisdictional act. It does not matter for what reasons

> jurisdiction is lacking. It may be that this jurisdiction was never conferred upon the priest. It may have been conferred, but invalidly. It may have been conferred but does not extend to the territory in which he uses it or to the persons over whom he exercises it. Or it may have been conferred validly but was subsequently lost by the one who possessed it." (224)

> "However, it cannot be gainsaid that, as in the case of matrimonial impediments, so too in regard to her jurisdictional laws the legislator has given innumerable signs of benignity and of grave concern for the good of the faithful. Above all, he has always been careful that his restrictions should never defeat, by their consistency and rigidity, their chief and ultimate purpose: the common good. Thus, as conclusive proof for this contention, one may point to such canon as 207, §2; 882; 2247, §3; and 209. In all these instances an otherwise non-existent jurisdictional power is specifically provided, or supplied, to insure the validity of the jurisdictional acts performed." (144)

Fr. Miaskiewics further states that this jurisdiction can even be supplied to people who are unfit and unworthy while the ordinary manner of bestowing jurisdiction is momentarily suspended.

> "Supplied jurisdiction, then, is a jurisdiction, be it ordinary or delegated, which is bestowed in an extraordinary manner, without any formality, even perchance to people who are unfit and unworthy. Thus the ordinary manner of bestowing jurisdiction is momentarily suspended." (27-28)

As was previously mentioned, hardly anything Mrs. Linaburg cited is relevant and none of it states or supports her conclusions. Most of the quotes she employs are only statements about the nature and general use of jurisdiction in the Church. Some of her quotes have been so blatantly taken out of context that it becomes hard to give her the benefit of the doubt that she did not intentionally exclude the context knowing that it would be

detrimental to her thesis. For instance, Mrs. Linaburg selects two passages from page 23 of Fr. Miaskiewics book and presents them in page 38 of her booklet as such:

> "There is no jurisdiction without a title."
> "And where, by mandate of the Church or her rightful representatives, jurisdiction is required for the validity of a certain act, there, *if the minister acts without the proper jurisdiction, he acts fruitlessly because invalidly*. In such individual instances it is useless to bring up as an argument for validity the presence of good faith on the part of the priest or of the individual." [Mrs. Linaburg's emphasis] (23)

She provides no context for these passages in her own words or in the words of Fr. Miaskiewics. The first passage would appear to Mrs. Linaburg's readers as an absolute statement about jurisdiction - that there is none without a title. This quote might seem to prove that no traditional priest today could possess jurisdiction unless they had a title.

Following this, the next passage she cites states that, in regards to acts which require jurisdiction for validity, a minister without the proper jurisdiction is acting fruitlessly because his acts are invalid. It appears that Mrs. Linaburg is using these two passages in an attempt to show that all acts requiring jurisdiction for validity performed by a priest without a title would be invalid and fruitless. They would, in other words, be an illusion, as the title of her booklet suggests.

Despite what her intents may have been, Mrs. Linaburg has badly distorted the words in Fr. Miaskiewics book by taking these two passages out of context and presenting them in a way that might persuade her readers of her conclusion. Her quotes are taken from Fr. Miaskiewics sub-section titled "The Supplying of Jurisdiction" under the larger and first section of his book, "Preliminary Notions." In this sub-section he is introducing the topic of his book, supplied jurisdiction. If "no jurisdiction without a title" were an absolute rule as Mrs. Linaburg presents it, then there would have been no reason for Fr. Miaskiewics to have continued writing his book. If there is no way of possessing jurisdiction without a title, then it would be frivolous to discuss

supplied jurisdiction, let alone write an entire book about it. Canon 209 would, likewise, be a frivolous canon with no meaning. However, as was stated, Mrs. Linaburg has taken these words out of context. Below is the full context from which Mrs. Linaburg's derived her quotes, as found in pages 22 to 24 of Fr. Miaskiewic's book. When reading the full context, notice that the passage about "no jurisdiction without a title," though presented by Mrs. Linaburg as a complete sentence, was actually just the end of a longer sentence. This longer sentence simply states that "no jurisdiction without a title" is a summarized statement of a general rule. Notice, then, that the very next paragraph explains that the Church makes exceptions to this general rule by supplying jurisdiction in extraordinary circumstances.

> "The general rule regarding the possession of jurisdiction for validity was well summarized by Wernz-Vidal: there is no jurisdiction without a title. And where, by mandate of the Church or her rightful representatives, jurisdiction is required for the validity of a certain act, there, if the minister acts without the proper jurisdiction, he acts fruitlessly because invalidly. In such individual instances it is useless to bring up as an argument for validity the presence of good faith on the part of the priest or of the individual. For, as Toso notes in adducing Celsus' principle, the law is to be considered as continuing to have its effect even though in individual instance some inconvenience be suffered. The general good of the community, for which purpose the law is presumed to have been enacted, must prevail.
>
> However, granted that the intricate jurisdictional system in the Church today has been prompted by the Church's desire to safeguard the Church and the faithful against the inroads of duplicity and incompetency, in a word, to promote the good order of the Church, then on the other hand certain extraordinary conditions cause the invalidity of the acts performed by one jurisdictionally incompetent demand that the Church let down the bars, relax the strictness of her jurisdictional sanctions and make special provisions for the validity of the acts performed under such extraordinary circumstances. For, as Kearney

> observed, it will escape no one that a series of invalid acts, posited by an unauthorized agent, whether maliciously or in good faith, especially when distributed over a long period of time, will raise havoc in society. And to forestall such dangers and calamities, provided that the necessary conditions are verified, namely, common error or positive and probable doubt of fact or of law, the necessary jurisdiction is *supplied* by the Church." (Miaskiewicz, 22-24)

To clear up other possible confusion it should also be properly understood what exactly the Church means by "title." It is not uncommon for people to think that a title is some kind of document and that a person would have no title if they had never been issued this document. A title, however, is not a document. Though a document can record the bestowal of a title and assist in showing that a person has a title, it is not itself a title. A title is simply the cause of the possession of authorization for an act. So, even if one was never issued a document stating their authorization for an act, they could still give a reasonable explanation as to why the Church authorizes their act. In that explanation might be found the cause wherefore they can act or the proof of the quality in virtue of which they can take part in the performance of an act.

> "It is readily understood that no one can posit a juridical act unless and until he has the necessary authorization or power to do so. This requisite, as the Romans put it, the *cause* wherefore one can act, is the title. Or, as Van Hove phrases it, a title is the instrument of proof of a juridical act or of the quality in virtue of which one can take part in the performance of such an act. Let the reader be warned that the title is not to be confused with the document which contains the record of its bestowal." [original emphasis] (Miaskiewicz, 14)

Mrs. Linaburg next cites a passage that states that the church can never, and she emphasizes "never," supply the power of Orders nor can it supply jurisdiction to the insane or someone who is simulating absolution. It doesn't seem that anyone has claimed the Church can supply the power of Orders or supply

jurisdiction to the insane or someone simulating absolution. This passage, therefore, becomes irrelevant to her thesis and the situation today. She then presents the quote below, in which she emphasizes certain words.

> "The important point to bear in mind is that jurisdiction, in the sense that was carefully designated in the preliminary notions, is a juridical factor and that jurisdictional laws are at least equivalently invalidating or incapacitating laws. Thus, in the same manner that a dispensation is necessary for a person to marry validly in the presence of a diriment ecclesiastical impediment, so too the requisite faculty, *the required power*, or jurisdiction, is *necessary* to posit *validly* a jurisdictional act. Those, who have not that power, even should they possess all other qualifications, simply *cannot validly act*. This jurisdiction the Church alone can grant." (Linaburg, 38; Miaskiewicz, 116)

This clearly and simply states that jurisdiction is required to make a jurisdictional act valid and that the Church alone grants this jurisdiction. This statement presented in an isolated manner could persuade someone to think that unless a person had been granted jurisdiction directly by an authoritative person in the Church hierarchy, then their jurisdictional acts, such as absolution, are invalid. However, directly after the above quote Fr. Miaskiewics states that that the Church can grant jurisdiction in an extraordinary way, over and above her normal manner of distributing jurisdictional power.

> "This jurisdiction the Church alone can grant. As has been seen, the Church normally is very careful in allowing persons to share in its use. Nevertheless, over and above her normal manner of distributing such power, there are instances in the Code, of which canon 209 is only one, where the Church grants the necessary jurisdiction in an extraordinary way by supplying it in order that thus certain jurisdictional acts may be valid." (Miaskiewics, 161)

The last point to be made here concerns a quote from page 290 of Fr. Miaskiewics book, which Mr. Linaburg cites.

> "it needs but be recalled that there is a marked difference in the supplying by the Church in the two cases included in canon 209. In the case of common error jurisdiction is supplied which is *certainly* absent. In the case of positive and probable doubt of fact or of law, however, the jurisdiction is supplied only *ad cautelam*, there being a strong presumption that the minister possesses it independently of any supplying by the Church." (Miaskiewics, 290)

Unlike other quotes, Mrs. Linaburg has not taken this one out of context. In citing this passage in her booklet she emphasizes the last portion, *"there being a strong presumption that the minister possesses it independently of any supplying by the Church."* As stated in a previous chapter of this critique, Mrs. Linaburg seems to think that if a person has any jurisdiction, it must be either ordinary jurisdiction or jurisdiction *directly* delegated from a person (*ad hominem*). It can therefore be surmised that she believes this passage is saying that canon 209, in cases of probable doubt of fact or of law, supplies jurisdiction only when there is a strong presumption that the minister already has ordinary jurisdiction or jurisdiction *directly* delegated *ad hominem*. However, as was previously shown, a person can also be *indirectly* delegated jurisdiction from the Church by a law. If there is a probable doubt of fact or law in regards to whether certain conditions exist that fall within the scope of these laws, then a person can have recourse to canon 209 which would supply the jurisdiction if for some reason the law actually didn't provide jurisdiction for that case. In this manner, canon 209 serves as a reflex principle one can use when there is doubt about whether other canons could be used to obtain jurisdiction.

> "And yet one must not lose sight of the fact that there are other instances in the Code of extraordinary grants or extensions of jurisdiction. Such an instance, for example, occurs in canon 882 where the power of jurisdiction is granted to any and every priest, regardless of his personal status, to absolve any penitent from all censures and sins no matter how they may be reserved, provided that there be a

probable danger of death. Similarly, in canon 883 there is a prorogation of jurisdictional power on the sea to those who in their territory are already approved confessors. Likewise, similar extensions in regard to dispensation from matrimonial impediments and to assistance at marriage are evident in canons 1098, § 2, and 1043-1045. Other canons also make liberal allowances on the part of the legislator when the spiritual welfare of the penitent is permitted to outweigh the advantage of strict consistency in the law. Thus canon 207, § 2, states that jurisdiction granted for the internal forum is still validly exercised if through inadvertence the priest has not noticed that the time for his faculties has expired or that he has taken care of the number of cases for which he had faculties. Canon 2247, § 3, maintains the efficacy of absolutions from certain reserved censures if and when given by priests ignorant of the reservation. Like these canons, canon 209 reveals the aim of the legislator to provide for the good of the faithful. But whereas each of the other canons is restricted to cover particular cases, canon 209, while also demanding the presence of certain conditions for its functioning, exerts its force in regard to all sorts of jurisdictional acts. In addition, it serves, or rather it can serve, as a reflex principle whereby the other canons can be used in the event of a positive and probable doubt as to the existence of the conditions that the Code requires for their functioning" (Miaskiewics, 28-29).

"From the very nature and circumstances of doubts, from the very fact that they can arise in the most private conditions, as, e. g., in the confessional, it becomes quite clear that, though this part of the canon is in no way intended to harm the common good, still it was formulated especially in favor of the priest, to make more remote the possibility of anxieties and scruples, and to afford him an authorized reflex principle by which practical certitude can be attained when he is confronted with doubts arising from the theoretical interpretation or the practical application of a law." (Miaskiewics, 178)

A few brief facts will be restated to conclude this chapter. First, a title is not a document, but simply the cause by which a person is authorized to act. Second, the Church, in virtue of canon 209, can supply jurisdiction to priests who had never previously possessed any jurisdiction. Lastly, if there is a probable doubt as to whether a law confers jurisdiction for a particular act under a certain set of circumstances, the Church allows a person to perform that act with practical certitude that the Church supplies jurisdiction, in virtue of canon 209, if the law in question actually does not provide the jurisdiction for those circumstances.

VIII. The Sacrament of Penance

The Sacrament of Penance is unique among the rest of the sacraments in that it requires the minister to possess jurisdiction for validity. Mrs. Linaburg contends in her booklet that all confessions would be invalid today because, as she believes, no priest possesses the jurisdiction necessary to absolve. She addresses the topic of Confession in the same manner as she addresses her other topics – by not actually offering an argument in her own words, but by simply taking portions of quotes from various Church sources regarding the topic and arranging them in a way she thinks might appear to support her thesis. As with other topics in *Authentic Illusions*, this topic is not confined to a single section, but is scattered throughout the booklet.

One portion of Mrs. Linaburg's treatment of Confession concerns quotes which she presents as dogmas, taken from Denzinger's *Sources of Catholic Dogma*. It is beyond the scope of this work to fully address the issue of what is and what is not dogma, but it should be pointed out that not every statement found in Denzinger's book is a dogma. What Denzinger presents in his book are the sources of dogma, which also include other statements and laws of the Church that are not dogmatic. Denzinger's is a great source for learning about the Church and in helping to determine what is dogmatic, but no one should claim a statement is dogmatic simply because it is found in Denzinger's book. Among other things, many mutable disciplinary laws and statements are mixed together with certain immutable dogmas in Denzinger's *Sources of Catholic Dogma*.

With that point in mind, each of the three quotes Mrs. Linaburg presents as dogma will now be addressed. For the sake of clarity, these quotes will be presented here as they appear in Denzinger's, with original emphasis. They will not include the emphasis Mrs. Linaburg added to the quotes when presenting them in her booklet. They may also include more of the quote than Mrs. Linaburg presented, so as to capture more of the context here.

This first quote comes from the Council of Florence's decree for the Armenians, *Exultate Deo* (1439).

> "The fourth sacrament is penance, the matter of which is, as it were, the acts of the penitent, which are divided into three parts. The first of these is contrition of heart, to which pertains grief for a sin committed together with a resolution not to sin in the future. The second is oral confession, to which pertains that the sinner confess integrally to his priest all sins of which he has recollection. The third is satisfaction for sins according to the decision of the priest, which is accomplished chiefly by prayer, fasting, and alms. The words of absolution which the priest utters when he says: *Ego te* absolve, etc., are the form of this sacrament, and the minister of this sacrament is the priest who has either ordinary authority for absolving or has it by the commission of a superior. The effect of this sacrament is absolution from sins." (D699)

The Council of Florence's decree for the Armenians was intended to reduce the truth of the sacraments into a very brief formula in order to more easily instruct the Armenians, as stated in the first sentence of the decree, which was not included in *Authentic Illusions*.

> "In the fifth place we have reduced under this very brief formula the truth of the sacraments of the Church for the sake of an easier instruction of the Armenians, the present as well as the future." (D695)

In other words, the formula of the Sacrament of Penance, as found in this *Exultate Deo,* is a brief and general explanation of the Sacrament as it is administered in the Church under ordinary conditions. It is absurd to infer that it was intended to explain the validity or the licitness of the Sacrament in every circumstance, without exception. Since the formula is "reduced" and "very brief," it should not be used as a complete and comprehensive explanation of the Sacrament, especially in regards to extraordinary cases. The lack of reference to exceptions for extraordinary cases in such a brief formula in no way implies that no exceptions exist. The Church makes exceptions for extraordinary cases, though no one should expect to find these in a

reduced and brief explanation of confession, such as is found in *Exultate Deo*.

The next quote comes from the Council of Trent (1551). Here is the full quote, including parts that were excluded in *Authentic Illusions*.

> "Therefore, since the nature and essence of a judgment require that the sentence be imposed only on subjects, there has always been the conviction in the Church of God, and this Synod confirms it as most true, that this absolution which the priest pronounces upon one over whom he has no ordinary or delegated jurisdiction has no value. It seemed to be a matter of very great importance to our most holy Fathers for the discipline of the Christian people that certain more atrocious and grave crimes should be absolved not by anyone indiscriminately, but only by the highest priests. Hence the sovereign Pontiffs, by virtue of the supreme power given them in the universal Church, could rightfully reserve to their own exclusive judgment certain more serious cases of crimes. Neither should it be a matter of doubt, since all things which are from God are well ordered, that the same may lawfully be done by all bishops each in his own diocese, "to edification," however, "not to destruction" [2 Cor. 13:10], by virtue of the authority over their subjects given to them above other priests inferior in rank, especially with regard to those crimes to which the censure of excommunication is attached. That this reservation of crimes has force not only in external administration, but also in the sight of God is in accord with divine authority [can. 11]. But lest anyone perish on this account, it has always been piously observed in the same Church of God that there be no reservation at the moment of death, and that all priests, therefore, may in that case absolve all penitents from any sins and censures whatsoever; and since outside this moment priests have no power in reserved cases, let them strive to persuade penitents to this one thing, that they approach their superiors and lawful judges for the benefit of absolution." (D903)

This chapter of the council states the general law of the Church on confession with the purpose of preventing priests from hearing confessions without obtaining authority over their subjects from their superiors. The Church acknowledges that it is possible for circumstances to exist where jurisdiction is indirectly delegated by the Church to a priest to absolve, who does not possess ordinary jurisdiction or jurisdiction directly delegated by a superior, and this is evident in Church history, Church teachings, and Canon Law. In fact, one example of this is found in the last sentence of the Council of Trent quote above, which begins "But lest anyone perish on this account…" Mrs. Linaburg, however, excluded this sentence from her quote.

A point should be made here about the requirement that a priest must first be the judge of the penitent they are pronouncing judgment over. In regards to the Sacrament of Penance, St. Thomas teaches that even a layman, though not the judge over a person, through lack of a priest and on account of urgency can take the place of judge over a person who confesses to them. In this case, the layman would only be lacking the power of Orders to absolve. Although he lacks the power of Orders to absolve, the layman takes the place of the judge in so far as the penitent submits to him.

> "Although a layman is not the judge of the person who confesses to him, yet, on account of the urgency, he does take the place of a judge over him, absolutely speaking, in so far as the penitent submits to him, through lack of a priest." (ST, Suppl. Q.8, Art.2, ad.2)

If circumstances exist where a layman can take the place of a judge over the penitent, in so far as the penitent submits to him; then certainly circumstances exist when a priest, simply lacking jurisdiction, can take the place of a judge over a penitent, in so far as the penitent submits to him. Unlike the laymen, the priest in these circumstances also has the power of orders and could, therefore, validly absolve the penitent.

The last quote from Denzinger's presented by Mrs. Linaburg in regards to confession comes from a decree of Pope Alexander VII (1665).

> "16. Those who have provided a benefice can select as confessor for themselves a simple priest not approved by the ordinary." (D1116)

Pope Alexander VII here condemns the idea that because someone has provided a revenue producing property to the Church, they then have the right to select any confessor they want. This has little, if any, relevance to Mrs. Linaburg's thesis. It may be that she knew someone who believed they obtained the right to choose a priest to be their confessor simply from the fact that they had given property or money to that priest. She would have been correct in showing that person they could not obtain that right simply from giving property or money. The fact that it is wrong for a person to think they can pay to choose a confessor is irrelevant to whether or not circumstances exist in which the Church grants jurisdiction to priests, who would not otherwise have it, to hear confessions.

In one part of *Authentic Illusions*, Mrs. Linaburg seems to use a quote to address an instance in which the Church would supply jurisdiction (35). It seems as though she thinks this quote shows that even in the case of an exception where the Church supplies jurisdiction, the priest would still incur a suspension and be sinning if he performed the confession. That she thinks this is evident from the words she adds in brackets saying that priests today all act with full knowledge and deliberation concerning the common error of the faithful. She takes this quote from a 1923 book, *Delinquencies and Penalties in the Administration and Reception of the Sacraments*, in which her comments are in brackets.

> "Two new censures are introduced in canon 2366. The first is suspension a divinis incurred ipso facto by a priest who presumes to hear sacramental confessions without the necessary jurisdiction…It might happen that due to a common error on the part of the faithful the Church would supply jurisdiction and the absolution be valid. Nevertheless, the priest would incur the suspension if he acted with full knowledge and deliberation [as they all openly do], because the Church supplies jurisdiction in this case for the good of the faithful, and not to aid a delinquent

> priest to escape penalties due to his malice. Hence…if a priest while hearing confession should recall with moral certainty that the time of his jurisdiction had expired, he would be obliged to discontinue hearing until he had obtained expressed jurisdiction. If he should continue hearing the confessions without first having secured the necessary jurisdiction, he would incur the censure." (Linaburg, 35)

Despite what Mrs. Linaburg's thoughts are about this quote, it is only speaking of the exception of common error under ordinary circumstances and not of other types of exceptions where the Church would supply jurisdiction in cases of necessity. Under ordinary conditions, when there is no necessity, it would obviously be wrong for a priest to knowingly act without jurisdiction. In other words, just because the Church will supply jurisdiction in common error, even when the priest knows that he acts *without necessity*, does not mean that the priest can take advantage of the common error when there *is no necessity*. This doesn't mean, though, that the priest would be sinning by acting when there *is a necessity* to act. The following passage from Fr. Kelly's book provides another example of this.

> "There are cases where the law delegates jurisdiction to the confessor and renders his absolution valid because of the supreme interest of the Church in the good of souls; but the priest is prohibited from using this jurisdiction except in extreme necessity, so that if he uses the jurisdiction without necessity, the confessor absolves validly but is guilty of sin, for he acts illicitly; e.g., the absolution of a dying accomplice by the guilty priest when another priest, to whom the accomplice would and could confess, is present or could be summoned easily. Therefore, in using the faculties granted by the Code to the confessor in these extraordinary circumstances, the priest must bear in mind that there are two aspects of his action with which he must

> be concerned; the validity of his absolution or dispensation, and the liceity of his action" (87-88)[27]

Most of Mrs. Linaburg's quotes concerning confession simply state general and ordinary rules in regards to jurisdiction. Many of her quotes only repeat what her other quotes had stated. She hardly addresses the issue outside of the general and ordinary rules of the Church.

Among the many general statements she includes on page 6 of *Authentic Allusions*, she also quotes a line regarding canon law on delegated jurisdiction for confession in a way which seems to state that without a local ordinary, there is absolutely no way to obtain jurisdiction. As she does with so many other quotes, she takes this one out of context to make it appear as if it were an absolute and unconditional statement. She does this by presenting the quote in isolation of anything that might have been said elsewhere regarding the topic and then adding her own emphasis to certain words to bolster the idea that the statement is unconditional. Her quote comes from page 54 of Fr. Kelly's book, within a section on canon law and delegated jurisdiction.

> "The local ordinary is the *only one* and *only source* from whence jurisdiction for hearing confessions…may be obtained." (Linaburg, 6)

In the very same section regarding delegated jurisdiction, at the bottom of the very same page from which Mrs. Linaburg extracted the previous quote, Fr. Kelly states that there are cases in which the Church supplies missing jurisdiction. This is contrary to her insinuation that there is no way of obtaining jurisdiction if there is no local ordinary.

> "Delegated jurisdiction must be conceded either in writing or expressly by word, otherwise the delegation is invalid, and the subsequent absolutions of the supposedly delegated confessor are invalid, except in those cases in which the Church supplies the missing jurisdiction." (Kelly, 54-55)

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[27] Kelly, James P., J.C.D. *The Jurisdiction of the Confessor: According to the Code of Canon Law*. New York: Benzinger Brothers, 1929

On the same page of *Authentic Illusions* she quotes a passage from page 23 of Fr. Kelly's book which discusses an ancient Church canon that required priests to receive jurisdiction from the bishop in order to validly absolve any penitent. The quote, in the way she presents it, seems to imply that even in the earliest days of the Church a priest could never validly absolve without jurisdiction from their bishop. As she does with many quotes, certain words in this one are replaced with an ellipsis (…). Ellipses are a great tool for any writer when they are presenting many quotes. They can be very helpful in excluding irrelevant and unimportant information. One would naturally presume that the words that Mrs. Linaburg replaced with an ellipsis in this quote were irrelevant and unimportant.

> "It is concerning the power of jurisdiction that Canon 30 of the Council of Hippo in 393 speaks, when it ruled that priests cannot absolve any penitent without the consent of the bishop… evidently the priest did not lack the power to absolve, since he needed only the consent of the bishop, but what he lacked was the power of jurisdiction or the authority to pass judgment upon the penitent. Even in its earliest age the Church has recognized the necessity of jurisdiction in the confessor." (Linaburg, 6-7)

Far from being irrelevant and unimportant, however, the eleven words she left out and replaced with an ellipsis make the quote say exactly the opposite of what she intended it to say. The words Mrs. Linaburg excluded from the middle of her quote explicitly show that, even from the earliest days, the Church has made exceptions in cases of necessity when priests were not able to obtain jurisdiction from their bishop.

> "It is concerning the power of jurisdiction that Canon 30 of the Council of Hippo in 393 speaks, when it ruled that priests cannot absolve (i.e., reconcile) any penitent without the consent of the bishop, except when the bishop is absent and in case of necessity. Evidently the priest did not lack the power to absolve, since he needed only the consent of the bishop, but what he lacked was the power of

> jurisdiction or the authority to pass judgment upon the penitent. Even in its earliest age the Church has recognized the necessity of jurisdiction in the confessor." (Kelly, 23)

It doesn't seem likely that Mrs. Linaburg excluded the words "except when the bishop is absent and in case of necessity" because she simply thought it made the quote unnecessarily long. It is obvious that she excluded these words because they did not say what she wanted and she did not want her readers to see them.

On page 17 of *Authentic Illusions*, Mrs. Linaburg quotes a passage from the book *Christ and His Sacraments* which states that the law delegates jurisdiction to any priest to validly and licitly absolve any penitent who is in danger of death. This quote ends by also stating that a priest forbidden to exercise their office may lawfully absolve a dying Catholic. Mrs. Linaburg, however, makes the comment that the Council of Trent disagrees.

> "'A priest forbidden the exercise of his office in punishment of crimes is still able to grant valid absolution, and he may do so lawfully *if a dying Catholic asks him*.' [See page 40, #29 Council of Trent disagrees]" (Linaburg, 18)

The quote from the Council of Trent on page 40 of *Authentic Illusions* is specifically in reference to Extreme Unction, not Penance, as she even notes in her booklet.

> "According to the teachings of the infallible Council of Trent under Extreme Unction: 'To the priest, therefore, has been committed the administration of this Sacrament; not, therefore, to every priest, as holy Church has decreed, but to the proper pastor *who has jurisdiction*.'" (Linaburg, 40)

Though Extreme Unction may include the remission of sins, Penance and Extreme Unction are two different sacraments. If they were the same, there would only be six sacraments in the Church. Besides this, her quote of the Council of Trent concerning Extreme Unction simply states a general rule of the Church and is not addressing any extraordinary circumstances. As Fr. Carr explains in an 1880 volume of the Irish Ecclesiastical Record,

theologians are commonly agreed that even a priest forbidden the use of his office, such as a *vitandus*, could lawfully administer Extreme Unction in a moral necessity.

> "The only cases therefore in which a *vitandus* may licitly administer a Sacrament may be reduced under the head of absolute or moral *necessity*. Thus he may licitly administer the Sacraments of Baptism, and of Penance, when there is danger of an unbaptizeed person dying without the former, or a baptized person dying without the latter sacrament. Again, theologians are commonly agreed that it would be lawful for a *vitandus* to administer the Eucharist or Extreme Unction to a dying person who had no opportunity of receiving the Sacrament of Penance. Furthermore it seems sufficiently probable that even though the Sacrament of Penance had been received by a dying person, a *vitandus* might, in the absence of any other minister, licitly give the Viaticum or Extreme Unction." (Carr, 292)[28]

Beyond the aforementioned quotes, most of the others in *Authentic Illusions* concerning Confession simply restate general rules of the Church under ordinary conditions. Mrs. Linaburg hardly addresses any of the Church's rules under extraordinary conditions and, as was shown, she even excludes words from quotes that would have shown that the Church does make exceptions in times of necessity.

Extraordinary Circumstances in Canon Law

By now, it should be clear that the Church does make exceptions to ecclesiastical laws and will supply jurisdiction in times of necessity. It has also been previously explained that, in some cases, the Code of Canon Law itself confers jurisdiction; and this is true for the jurisdiction required to absolve.

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[28] Carr, Thomas J., "The Censures of the Apostolicae Sedis." *The Irish Ecclesiastical Record*. Third Series, Vol. 1. Dublin: Brown & Nolan, Nassau-Street, 1881.

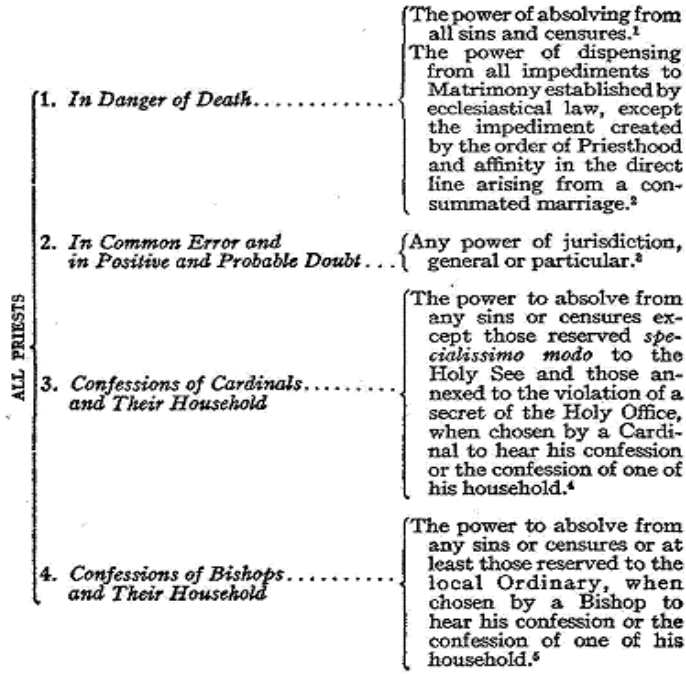
> "The Code of Canon Law grants to all *priests*, in some circumstances, certain powers of absolving and of dispensing." [original emphasis] (Kelly, 81)

When the Code grants this jurisdiction, it is granted to priests even if they never had any jurisdiction previously.

> "The powers granted by the Code to all *priests* do not require that the priest have any habitual ordinary or delegated jurisdiction in order to use the power thus granted." [original emphasis] (Kelly, 81-82)

On page 82 of his book, Fr. Kelly provides a chart showing the general instances in which the Code provides jurisdiction to a priest who previously had none.

> "The Circumstances in which these powers are granted, and the nature of the powers conceded, are as follows:"



(Riley, 82)

As was explained in chapter five, jurisdiction can be possessed by holding an office, it can be delegated directly and personally from a superior (*ab homine*), or it can be indirectly delegated by law (*a jure*). Fr. Kelly recapitulates this fact with regard to confession under extraordinary circumstances.

> "This jurisdiction, which the Code grants in these extraordinary circumstances, when it is not annexed to an office in the strict sense of the term, seems best called delegated by law (*delegate a jure*); for the office of confessor is not an ecclesiastical office in the strict sense, and in some cases jurisdiction is granted by the Code to priests who do not hold even the office of confessor. Therefore this jurisdiction cannot be said to be ordinary. Nor can it said to be delegated *ab homine*, since it is not granted immediately and personally by a superior to an individual." (Kelly, 85)

One extraordinary circumstance is found in canon 882. This canon grants jurisdiction to any priest to absolve validly and licitly when the penitent is in danger of death. Fr. Kelly cites this canon in Latin, before going on to explain it in more detail. The words "in danger of death" are translated from the Latin, "in periculo mortis."

> "In periculo mortis omnes sacerdotes, licet ad confessions non approbati, valide et licite absolvunt quoslibet poenitentes a quibusvis peccatis aut censuris, quantumvis reservatis et notoriis, etiamsi praesens sit sacerdos approbatus, salvo praescripto can. 884, 2252." (Kelly, 91)

Though Fr. Kelly provides a thorough explanation of this canon, he does not include a word-for-word English translation of the canon. A brief English translation is, however, provided in Fr. Woywod's commentary on the Code.

> "In danger of death all priests, though not approved for confessions, can validly and licitly absolve any penitent from any sins and censures, although reserved and notorious, even if an approved priest is present. Canons

> 884 and 2252, however, remain unimpaired." (Woywod, *The New Canon Law*, 490)

Fr. Kelly clearly explains that canon 882 provides jurisdiction to anyone who has the sacramental character of priestly orders, regardless of their prior jurisdictional standing within the Church. This includes all those who never had jurisdiction, along with schismatics, heretics, apostates, and others. As long as a person has the sacramental character of holy orders, they can receive jurisdiction from this canon.

> "Anyone who has been validly ordained a priest, and thereby possesses the power of orders, receives from this canon the necessary power of jurisdiction for granting absolution from any sin or censure as long as the penitent is in danger of death. Therefore, anyone possessed of the sacramental character of priestly orders, be he apostate, heretic, or schismatic, degraded or reduced to the lay state, laboring under an irregularity, excommunication, suspension, or personal interdict, or merely one who has no jurisdiction to hear confessions, or no jurisdiction in this particular place, grants valid absolution to any penitent who is in danger of death." (Kelly, 92-93)

Now that it is clear that any priest can be granted jurisdiction from canon 882, regardless of whether they ever had jurisdiction, it will next be explained under what conditions this canon grants jurisdiction to a priest who doesn't have any. As previously mentioned, the conditions for the use of canon 882 are simply stated as "in danger of death." However, the meaning of "in danger of death," as used in this canon and others, is commonly misunderstood to mean only "at the point of death;" or the point in which a person is literally on the brink of death because of a physical condition that will quickly end their life. Even this was all the Code meant, it would still have shown that the Church would rather have a person confess to any priest for absolution, even one previously without jurisdiction, than not confess to any priest at all and simply rely on a perfect act of contrition. Therefore, anyone who asserts that it is always, without exception, sinful to confess to a priest who doesn't have jurisdiction would

have been asserting that the Church wishes a person to sin at the point of death.

The meaning of "in danger of death," though, as it is used in the Code, is not the same as "at the point of death." It is much more than this. Fr. Kelly explains that the meaning of *in periculo mortis* (in danger of death) is something very different than "at the point of death."

> "Strictly speaking, the meaning of the expression *in periculo mortis* differs greatly from the meaning of the expression *in articulo mortis*, for the former includes any circumstance in which it can be prudently feared that death will soon occur, whereas the latter phrase merely signifies the very last moment of life, or the occasion when death is imminent and inevitable. Canonists and theologians, however, have come to regard the two phrases as synonymous, and the Holy See has repeatedly used them promiscuously, so that there is no doubt that in law they have the same force. To use the faculty granted by Canon 882, therefore, it is not necessary that the penitent be on the very brink of the grave, nor was this necessary before the promulgation of the Code, notwithstanding the expression used by the Council of Trent; but it suffices that there exist in the moral estimation of the priest a prudent fear that the penitent may die within a short time. (Kelly, 91-92)

He further explains that a danger of death does not only arise by an intrinsic cause, such as a physical malady, but also arises from extrinsic causes where a person may be perfectly healthy.

> "It is not necessary that the danger of death arise from an intrinsic cause, such as a disease, or a wound, or old age, but it suffices even if the danger arise from an extrinsic cause, such as war, a surgical operation, an aeroplane journey, etc. The Sacred Penitentiary declared on March 18, 1912, and on May 29, 1915, that soldiers mobilized for war were to be considered in danger of death even though they were not to be sent into battle immediately." (Kelly, 92)

Below are several more examples of circumstances to which danger of death has been applied. These examples help provide a clearer understanding of what "in danger of death" means.

> "The code does not specify imminent death, but merely danger of death. It does not matter from what source the danger of death arises - sickness, wounds, impending serious operation, call of a soldier to war, etc." (Woywod and Smith, 491)

> "The danger of death may arise from any cause whatsoever. It may arise from an intrinsic cause, such as disease, wound, old age, etc.; it may be brought about by an extrinsic cause, such as war, surgical operation, difficult journey, sentence of judge, etc. A norm for judging when the danger of death may be said to be present will be found in the declaration of the Sacred Penitentiary of March 18, 192, and May 29, 1915. This declaration was to the effect that soldiers mobilized for war were to be looked upon as in danger of death without further question whether they were to be sent into battle immediately." (Hyland, 94)

> "It is indifferent whether the danger of death is due to a subjective cause (sickness) or to an exterior one (serious danger of infection, impending battle, difficult birth, dangerous operation or perilous sea-voyage). Note here the declaration of the S. Penitentiary of March 18, 1912, according to which mobilized soldiers are *ipso facto* to be put on the same plane with person who are in danger of death."
> (Simon, 10)

> "What has been said above concerning the administration of absolution *in articulo mortis* stands good also for its administration *in quolibet gravi periculo mortis.* For the two situations are generally considered as identical; moreover, the Ritual says: "When danger of death threatens;" besides there is a divine precept to confess when there is danger of death also, and thus there arises a case of necessity.

> A grave *periculum mortis* is considered to exist: (1) In a dangerous illness; (2) in times of plague; (3) at a difficult birth; (4) before a very difficult surgical operation; (5) in battle, or shortly before it; (6) before a very dangerous sea voyage, etc." (Schieler, 306-307)[29]

The examples of intrinsic causes given for danger of death include disease, sickness, wounds, and old age. Examples given for extrinsic causes include serious danger of infection, impending operation, time before or during a battle, a difficult birth, a difficult journey, an airplane journey, a perilous sea-voyage, during times of plague, after a sentence of a judge, and mobilization for, or call to, war even when the soldier will not be sent into battle immediately. These examples are all consistent with a strict interpretation of the law; since even in a strict interpretation the mind of the legislator must be considered, along with the reason for the law.

> "Strict interpretation clings to the text, and pays due regard to the mind of the legislator, but mitigates the rigor of the law as far as the *ratio legis* [reason of the law] will permit." (Augustine, Vol. 1, 98)

The previous examples make it clear that "in danger of death" is a situation, not necessarily a medical condition. It is also clear that this situation is not restricted to a certain amount of time. There is no time constraint on a difficult journey, for instance, and a soldier mobilizing for war may not go into battle for days, months, or years; if he ever goes into battle at all. A common thread among all of these examples is that the situation constituting a danger of death is one in which there is a danger of dying before being able to approach a priest in possession of jurisdiction. Under the extraordinary circumstances of today, the faithful are in a situation in which it is impossible to approach a priest who would normally be in possession of jurisdiction. It is a situation in which all of the faithful are continuously in danger of dying before being

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[29] Schieler, Caspar E., D.D. *Theory and Practice of the Confessional: A Guide in the Administration of the Sacrament of Penance.* Ed. Heuser, H. J., D.D., 2nd Ed. New York: Benzinger Brothers, 1905.

able to even find such a priest to absolve them. In light of the commentaries and wide range of circumstances given by the canonists, a person can prudently judge such a situation as constituting a danger of death, as it is meant in the Code. That canon 882 would grant jurisdiction to any priest to absolve the faithful under the extraordinary circumstances of today is fully in keeping with the benign mind of the Church.

If a person has doubts as to whether canon 882 would grant jurisdiction to a priest today, the Church has made provisions for this. If doubts arise as to whether the extraordinary circumstances of today are in fact the circumstances required for canon 882 to grant jurisdiction, then a doubt of fact exists. If there is a doubt as to whether canon 882 is being properly interpreted, then a doubt of laws exists. As explained by Fr. Kelly, when a doubt of law or fact, arises a person does not need to hesitate and can form a certain conscience that the absolution will be valid and licit. This is because the jurisdiction will be supplied in virtue of canon 209, in case it wasn't actually provided by canon 882.

> "Doubt may concern either the law or the fact. It is a doubt of law when, for example, authors disagree as to the correct interpretation of the law; and it is a doubt of fact when, for example, it is not certain that the circumstances required by the law are present in a particular case.
>
> Before the promulgation of the Code, many canonists denied that the Church would supply jurisdiction in cases in which the doubt was one of fact. And even when the doubt was one of law, they demanded that the opinion be supported by public probability before the Church would supply jurisdiction. This was called probable jurisdiction, while in the case of a doubt of fact, it was called doubtful jurisdiction.
>
> The Code abolishes these distinctions and states that the Church will supply jurisdiction in cases of doubt of law and doubt of fact as long as the doubt is positive and probable. Therefore, whenever a confessor doubts that he possesses jurisdiction, whether his doubt is a grave reason for thinking that he does possess jurisdiction, he may use Canon 209 as a reflex principle to form a certain conscience and proceed to absolve validly and licitly

without any misgivings, for the Church will supply the deficient jurisdiction if it is really deficient.

All are agreed that in positive and probable doubt of law no cause whatsoever is required for the licit use of the supplied jurisdiction. But in positive and probable doubt of fact, some require at least a slight cause in order to absolve licitly in this circumstance. This is rightly denied, however, since the sacrament is not exposed to the danger of nullity, nor is the priest forcing the Church to supply jurisdiction against her will, for this concession is granted for the benefit of the priest as well as for the good of the faithful. At any rate, some slight cause will almost always be present, so that a priest with a positive doubt either of law or of fact need not hesitate to grant absolution in virtue of Canon 209." (Kelly, 143-144)

"If the priest doubts whether or not danger of death is present, he may validly and licitly absolve from any sin or censure as long as he can judge that the danger of death (not necessarily death itself) is a least probable, for if danger of death is not really present, the Church will supply jurisdiction in virtue of Canon 209. Likewise, if the confessor falsely judges that the danger of death was present when it really was not, there is no need for alarm, for the absolution was certainly valid, and, if given in good faith, also licit, in virtue of the same canon." (Kelly, 92)

IX. Private Baptism only in Danger of Death

It seems appropriate to conclude this entire critique with a brief examination of some significant ecclesiastical laws regarding baptism, which have enormous implications in light of Mrs. Linaburg's thesis. If someone were to admit no exceptions to ecclesiastical laws and also contend that the circumstances today could not, in fact, be considered a danger of death; to remain consistent, they would have to forbid nearly all baptisms performed today by anyone and regard them as sinful.

As canon 737 says, Baptism is either solemn or private. According to canons 738 and 741, the priest is the ordinary minister of solemn Baptism and the deacon is the extraordinary minister.

> **Canon 737.** "Baptism administered with the observance of all the rites and ceremonies prescribed in the liturgical books, is called *solemn*, otherwise not solemn, or *private*." [original emphasis] (Woywod, *The New Canon Law*, 151)
>
> **Canon 738.** "The *ordinary* minister of solemn Baptism is the priest. Its ministration, however, is reserved to the pastor or to another priest acting with the permission of the pastor or of the local Ordinary, which permission is lawfully presumed in a case of necessity." [original emphasis] (151)
>
> **Canon 741.** "The deacon is the *extraordinary* minister of solemn Baptism. "[original emphasis] (152)

The canons further state that private Baptism, the only Baptism a lay person could possibly administer, can be given only in danger of death.

> **Canon 755.** "Baptism should be given solemnly, except in the cases spoken of in Canon 759." (154)
>
> **Canon 742.** "Can. 742, §I, rules that in case of *danger of death, private baptism may be administered by anyone,*

provided he or she uses the proper matter and form and has the right intention." [original emphasis] (Augustine, Vol. IV, 43)

"§2 determines the order of precedence to be followed according to the Roman ritual. If a priest is present, he should be preferred to a deacon; a deacon to a sub-deacon; a clergyman to a layman; a man to a woman (unless decency would demand preference for the woman or unless the woman knows the form and manner of baptizing better than the man)." (Augustine, Vol. IV, 43)

Canon 759. "In *danger of death* Baptism may be privately administered. Two different cases are distinguished:

§I. If the Sacrament is conferred privately by one who is neither a *priest nor a deacon*, then no ceremonies or rites should be used, but only what strictly belongs to validity. In that case the person baptizing takes natural (not holy) water, pours it over the head of the one to be baptized, whether once or three times does not matter and says : " I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost." (2) If the person who baptizes privately, for instance, at the home of the person baptized, is a *priest or a deacon*, he must administer the Sacrament with the prescribed ceremonies and rites, unless there should be no time to apply all the ceremonies, or the parents would stubbornly oppose them, or the Holy Oils, chrism or salt could not conveniently be had. In these cases the priest or deacon would be permitted to omit the ceremonies. Otherwise there is a grave obligation to apply them even if Baptism is conferred privately.

Hence §2 rules that, outside the case of danger of death, *the Ordinary may not permit* private baptism to be conferred, except on non-Catholic adults who are baptized conditionally. This explains the serious obligation spoken of in the preceding section. The text does not limit the episcopal permission to individual cases, and hence Ordinaries may impart this faculty habitually." [original emphasis] (Augustine, Vol. IV, 43)

The conclusion is simple: outside a danger of death, it is illicit for a layman or a priest without jurisdiction to baptize. If the letter of the law must be followed in all cases, or if circumstances today do not constitute a danger of death; then nearly all baptisms performed today are forbidden by the Church and those administering and receiving baptism would be committing a grievous sin. If Mrs. Linaburg and anyone who shares her views were consistent in their beliefs, they would have to denounce all baptisms today along with the other sacraments and regard them also as *authentic illusions*.

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